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Decisions of the Zillah Subordinate and Assistant Courts of the Madras Presidency 1857

A = P. Irwine

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Decisions of the Zillah Subordinate and Assistant Courts of the Madras Presidency.

ZILLAH COURTS.

ZILLAH BELLARY.

PRESENT: P. IRVINE, ESQ., CIVIL JUDGE.

THE 6TH JANUARY 1857.

Appeal Suit No. 95 of 1856.

Appeal from the decision of Sashagerry Row, District Moonsiff of Culleeandroog, dated 2d October 1856.

Nursapully Condiah, (Plaintiff,) Appellant.

Sidda Linganagowd, (Defendant,) Respondent.

1. This is an appeal preferred by the Plaintiff from the decree passed by the District Moonsiff of Culleeandroog, dismissing the suit brought by him to recover from Defendant rupees 64, as being the balance of principal and interest, due on a bond *A* executed by Defendant to Plaintiff for rupees 100 on the 1st September 1850; and directing that he (Plaintiff) should pay Defendant his costs and also 30 rupees as damages for having filed a litigious suit.

2. The grounds advanced in support of the appeal are;

1st. That Defendant admits the bond *A*, but pleads payment of the value thereof; that the bond *A* contains a provision to the effect that payments should be endorsed thereon, and that those otherwise dealt with should not be admitted, and that there are decrees of this and the Sudr Court's which declare that no decision should be passed contrary to the terms of bonds;

2d. That the letters Nos. 1 and 2 were addressed on account of a payment of 50 rupees endorsed on the bond *A*, as having been made through Hanoomuntapah (Defendant's 4th witness);

3d. That although Defendant has antedated the letters Nos. 1 and 2 as having been received by him, yet those dates are falsified by the fact that no suit, either the present one, or Suit No. 36 which is connected therewith had been filed on those dates, and that consequently no money could have been paid on those dates to Defendant's 6th witness;

4th. That if, as Defendant pleads, the sum of 50 rupees, other than the amount of the letters Nos. 1 and 2, was paid, the bond sued on would forthwith have been taken back; and that the Defendant's plea that he allowed it to remain in the hands of the Defendant out of confidence, is inadmissible;

5th. That the demand is proved by the Plaintiff's witnesses;

6th. That under such circumstances the Moonsiff was wrong in not only dismissing the suit but also in awarding damages of 30 rupees against Plaintiff.

3. In his appeal answer the Defendant meets the above as follows;

1st. That the fact of payment having been made publicly, bars the objection raised on the ground of those payments not having been endorsed on the bond;

2d. That Nos. 1 and 2 were not addressed for the second payment endorsed on the bond; that the Moonsiff's observations in this respect are correct; that the words "received through Hanoomuntapah" (Defendant's 4th witness) which occur in the endorsement of the 2d payment on the bond, were inserted afresh after the bond was filed in the Moonsiff's Court, as is evident from the Moonsiff's signature appearing over and above those words;

3d. That payments were made to the Vakeel (Defendant's 6th witness) he having been a person in whom both parties placed confidence, and that the Moonsiff's observation regarding the dates are correct;

4th. That the Defendant acted justly and correctly in relying upon the Plaintiff's promise of returning the bond after receiving the amount of transfer;

5th. That there is no credible evidence to the demand;

6th. That the Moonsiff was right in conforming to the provisions of Section XXXVII, Regulation VI of 1816, seeing that the Plaintiff has brought a litigious suit;

7th. That Defendant begs that this Court will enforce the same upon the Plaintiff for having brought this vexatious appeal.

JUDGMENT.

4. The Civil Judge has considered the pleadings both original and appeal and the document, and cannot concur in the finding of the District Moonsiff.

5. In the bond sued upon it is distinctly specified that all payments are to be endorsed, and that no pleas of payment, not so supported, shall be admitted. This is sufficient to destroy the defence.

6. The Civil Judge is not satisfied that the Defendant's Documents Nos. 1 and 2 were received by him on the dates he alleges. Their contents shew that they were written in consequence of a suit brought against the present Defendant, and his pleader admits that at the date on which he says he received them, he was not concerned in litigation.

7. The Civil Judge for the above reasons resolves to reverse the District Moonsiff's decree, assessing the Defendant with all costs.

8. Before disposing of this suit, the Civil Judge thinks it right to call the serious attention of the District Moonsiff to the lax discipline which seems to prevail in his Court. Additions have been made to a document after it was filed, and the District Moonsiff declares it impossible to ascertain by whom this was done. Arrangements should be made by which the responsibility for the safe custody of such papers should rest upon a single goomastah.

THE 8TH JANUARY 1857.

Appeal Suit No. 106 of 1856.

Appeal from the decision of G. Timmapah, District Moonsiff of Gootty, dated 22d September 1856.

B. Arlappah, (Defendant,) Appellant.

Kookaty C. Condiah, (Plaintiff,) Respondent.

1. This is an appeal preferred by the Defendant against the decree passed by the District Moonsiff of Gootty, awarding 50 rupees (out of 150 rupees claimed) as damages to Plaintiff, in consequence of the gratuitous abuse given to him by Defendant on the 19th January 1856.

2. The grounds adduced in support of the appeal are ;

1st. That the evidence of Plaintiff's witnesses is contradictory ; besides being in deviation from the plaint ;

2d. That Plaintiff's witnesses are persons who earn their livelihood by low means ; that of them the 3d, 5th and 6th witnesses were also witnesses for the same Plaintiff in Appeal Suit No. 83 of 1856 ; that those witnesses deposed to false things at the instance of Plaintiff, and that their evidence was inadmissible ;

3d. The Defendant's pleas are proved by his witnesses, and also by Plaintiff's 7th and 8th witnesses ;

4th. That if any abusive language had been used towards Plaintiff he ought to have made a complaint to the proper authorities ;

5th. That the Moonsiff was wrong in saying that Defendant did not prove his pleas, but that Plaintiff had proved his.

3. The Plaintiff failed to put in an answer.

JUDGMENT.

4. The Civil Judge has considered the whole record of this suit, and fully concurs with the District Moonsiff in his finding.

5. The Plaintiff's witnesses appear to be in a respectable situation in life, and the evidence of those of them, who were examined in Original Suit No. 122 of 1856 (Appeal Suit No. 83) was considered good by the Judges in both the original and the appeal suits. The insinuations of the Defendant against them are therefore unwarrantable as well as useless. There are no such contradictions in the evidence as to discredit the testimony of the Plaintiff's witnesses.

6. The Defendant's witnesses do not, as alleged, prove the truth of the defence.

7. For the above reasons this appeal is dismissed with costs.

THE 17TH JANUARY 1857.

Appeal Suit No. 108 of 1856.

Appeal from the decision of Timmapah, District Moonsiff of Gootty, dated 25th October 1856.

Ebram Sahib, (Plaintiff,) Respondent.

Honnoormah, (Defendant,) Appellant.

1. The object of this appeal made by the Defendant is the reversal of the decree passed by the District Moonsiff of Gootty awarding that she should make good to Plaintiff rupees 136-8-0 (out of rupees 150 claimed) in virtue of a document *(A)* alleged to have been executed to himself by Defendant on the 13th January 1856.

2. The grounds of appeal are ;

1st. That Defendant did not execute the document *A* voluntarily, binding herself alone to be responsible for Pauper Original Suit No. 1 of 1856 of the Subordinate Court's file ; as is evident from its *(A)* having been lodged with the Plaintiff's 3d witness, and from the Plaintiff having afterwards filed, and proceeded with the said suit ;

2d. That the said pauper suit was tried and dismissed, as it was not proved ; that this dismissal was final ; and that therefore the bond sued on which has reference to the same matter, and which bears a date anterior to the said suit, became null and void ;

3d. That a reference to the records of the said pauper suit will shew that the document sued on is void.

3. In answer the Plaintiff says as follows;

1st. That Defendant admits the execution of the bond sued on, but pleads that it was not executed by her voluntarily; that her 1st and 2d witnesses allege that she (Defendant) declared that she was not willing to abide by the condition said to be stated in the bond, viz. that she should act agreeably to Plaintiff's orders; that this shews that Defendant objected only to that part of the document, without disputing about its value &c., and that nevertheless the Court will find that no such condition was entered in the bond;

2d. That the decision in the pauper suit cannot affect the bond sued on, because its execution is admitted by Defendant and proved by witnesses.

JUDGMENT.

4. The Civil Judge has considered the pleadings in the original suit, the document sued upon, the appeal petition and answer, and the record of Original Suit 1 of 1856 of Subordinate Court's file brought by the Plaintiff against the Defendant and two others, and is of opinion that the decision of the District Moonsiff cannot be upheld.

5. The document sued upon purports to be an agreement entered into by the Defendant (2d Defendant in suit 1) by which she, exonerating the other Defendants and taking upon herself all responsibility, agreed to certain terms with the Plaintiff, who, on his side, was to file a rauzeenamah in suit 1. A short statement of dates will shew that the Plaintiff from the first knew that the bond was worthless and that he himself not only failed to fulfil the conditions it imposed upon him, but acted in direct violation of them. On the 5th December 1855, the Plaintiff applied to be allowed to sue as a pauper. On the 15th idem permission was granted. The document sued upon is dated 13th January 1856, but on the 5th February the Plaintiff presented a regular plaint in which no mention was made of the document now sued upon. The suit was tried exparte. The witnesses named by the Plaintiff were examined, and though one of them was the writer and two of them attestors of the bond now sued upon, none of them said a word regarding it in their depositions; his suit was dismissed as their testimony was at complete variance with the pleadings. It is evident from these facts that the bond was never considered as a fully executed document, and that the Plaintiff himself violated its conditions. He cannot now be allowed

after failing in suit 1 to set up again what he had thus previously ignored.

6. For these reasons the District Moonsiff's decision is reversed, and the Plaintiff assessed with costs in both original and appeal suits.

ZILLAH CALICUT.

PRESENT : H. D. COOK, ESQ., ACTING JUDGE.

THE 5TH JANUARY 1857.

Appeal Suit No. 456 of 1856.

Appeal from the decision of E. Cullen, Esq., Principal Sudr Ameen of Cochin, dated 12th March 1856.

Vilcoonda Chetty Babanen ; by Vakeel Venguideshwarayen, (Plaintiff,) Appellant.

Allatho Kooty Tiroo Vengedom Pillay ; by Vakeel Ramen Menon, (Defendant,) Respondent

1. This is an appeal from the decree of the Principal Sudr Ameen dismissing the Plaintiff's suit for the recovery of rupees 98 from Defendant and to cause the Defendant to receive from Plaintiff 10 candies of coculus indicus as per karar executed by Plaintiff to Defendant in Magarom 1030.

2. The grounds upon which the Lower Court dismissed the suit were that it was the duty of the Plaintiff to have proved in the clearest possible manner that the coculus indicus was ready for delivery at the appointed time and that it was tendered by Plaintiff to the Defendant ; this he failed to do and the suit was dismissed.

3. The Plaintiff's grounds of appeal are ;

1st. That he proved that the coculus indicus was ready for delivering ;

2d. That the protest *A* was of value to his case.

4. The Respondent answers upholding the original decree.

JUDGMENT.

5. This is a counter suit to Original Suit No. 90 of 1855, Appeal Suit No. 437 of 1856, before this Court.

6. The Court is decidedly of opinion that it was incumbent on the Plaintiff to establish by the clearest evidence that he had in conformity with the karar tendered to Defendant the coculus indicus, and that the latter had refused to receive it ; 3 witnesses were adduced to prove this, but their testimony was opposed by the other witnesses who deposed that the stuff was not ready and their evidence is clearly more deserving of credit because no cause has been shewn why the Defendant should have refused to receive the coculus indicus for which he had already advanced money ; As remarked by the the Lower Court had the Plaintiff had the coculus indicus ready for delivery he could have had no difficulty in so lending it, that the Defendant could not possibly have denied the fact.

7. The Court concurs with the Lower Court that the protest *A* is of no value to the Paintiff's case.

8. I affirm the original decree and dismiss this appeal with costs against the Appellant.

THE 5TH JANUARY 1857.

Appeal Suit No. 481 of 1856.

Appeal from the decision of Mr. John D'Silva, District Moonsiff of Calicut, dated 30th June 1856.

Palangat Ramen Nair,..... (Plaintiff,) Appellant.

Eledate Edasherry Chundoo Nambiar,..... (1st Deft.) 1st Respt.
Poonatoor Kooymel Kandapen Nair,. .....(2d ditto) 2d ditto.
Chalail Payorah Kelloo,..... (3d ditto) 3d ditto.
Palakoonata Raroo Nair,..... (4th ditto) 4th ditto.
Katoor Poyilil Choy,..... (5th ditto) 5th ditto.
Arayangatparambil Rarichen,..... (6th ditto) 6th ditto.

1. This appeal is connected with Appeal Suit No. 227 of 1856.

2. In that case the point at issue was the alleged transfer

by P. M. Carata Parrakundy Oonikoomara Nair and two others to the Plaintiff of the kanom claim which their ancestors held upon certain property of which that now sued for forms only a small portion.

In this suit although Oonikoomara Nair the admitted karnaven is not a party, still as the Court is aware that in Appeal Suit No. 227 of 1856 he stoutly denied having ever made any transfer of the kanom to the Plaintiff upon which the Plaintiff's right of action necessarily depends, and as this important question will have to be enquired into and disposed of in this suit also in consequence of the nature of the defence made by the 4th Defendant who in the suit alluded to was admitted by Oonikoomara Nair to be the present owner of the kanom property before spoken of, the Lower Court was of opinion that this suit should also be dismissed, and the Court accordingly non-suited the Plaintiff with costs.

3. The latter appeals on the same grounds as in Appeal Suit No. 227 of 1856 to the effect, first, that he had filed other suits for the restoration of the remainder of the lands included in the teer deed; that if another suit is necessary to determine the point alluded to the present suit should have been postponed until a decision shall have been passed in that suit;

ii. That the Lower Court should have directed him (Appellant) to file supplemental plaint.

4. The Respondent is exparte.

JUDGMENT.

5. The Plaintiff's case was as follows. He sued for recovery of two years porapaad fanams 64 (rupees 64) and restoration of a land on payment of the 1st Defendant's kanom of fanams 120 (rupees 30). He based his suit on the ground that he had obtained the kanom right of Oonikoomara Nair, the karnaven of this tarwaad on this and other lands with ennuck to the 1st Defendant which the latter refused to accept. Oonikoomara Nair never admitted that he had transferred the kanom property of his tarwaad to the Plaintiff and in Appeal Suit No. 227 of 1856, the Court was of opinion that until the question as to the assignment of the property of which that now sued for forms but a small portion, to the Plaintiff had been definitely decided, the Plaintiff had no grounds upon which to base his action.

6. The Plaintiff is exactly in this position here and the Court on the same ground as it dismissed the Appeal Suit No. 227 of

1856 also dismissed this appeal with costs against the Appellant. Original decree of non-suit is affirmed.

THE 5TH JANUARY 1857.

Appeal Suit No. 473 of 1856.

Appeal from the decision of E. Cullen, Esq., Principal Sudr Ameen of Cochin; dated 11th March 1856.

Villa Koonda Chetty Babanan; by Vakeel Venguideshwarayen, } (Defendant,)Appellant.

Tiroovengaden Pillah; by Vakeel Ramen Menon, } (Plaintiff,) Respondent.

1. This is an appeal from the decree of the Principal Sudr Ameen of Cochin awarding to Plaintiff the sum of rupees 75, being the amount advanced by the Plaintiff to the Defendant together with the sum of rupees 20, being the penalty for the non-delivery of ten candies of coculus indicus at 2 rupees penalty per candy, making a total of rupees 95 with interest.

2. It appears that on the 7th of Coombhom 1030 the Defendant executed a document to the Plaintiff to the effect that by the 30th Meenom following he would deliver ten candies of coculus indicus to the Plaintiff at the rate of 15 rupees per candy in default that he would pay a penalty of rupees 20, being at the rate of rupees 2 per candy.

3. In furtherance of the karar the Plaintiff paid to Defendant by 2 instalments rupees 75.

4. The Defendant failed to deliver the goods and Plaintiff sued accordingly.

5. The Defendant in his answer admitted the execution of the karar pleading that he had the coculus indicus ready for delivery within the time specified, and that he only received in advance rupees 52.

6. The Principal Sudr Ameen after an attentive consideration of the proceedings in this and another suit connected with it, was of opinion that the Defendant failed to fulfil the condition of the document. He also found that the document *A* shews that an advance of rupees 75 was made.

7. The grounds of appeal are ;

1st. That as the coculus indicus was ready for delivery the Lower Court ought not to have awarded the penalty of rupees 20 ;

2d. That he proved that he had received only rupees 52 in advance.

8. Respondent answered upholding his former plea.

JUDGMENT.

9. The evidence adduced by Defendant to prove that he had the coculus indicus ready for delivery within the period specified in the karar was very unsatisfactory, the 1st witness merely deposing that he had ready to deliver to 1st Defendant a certain quantity of coculus indicus which the latter was to deliver to Plaintiff, and the other witnesses merely deposed that they had heard conversation upon the subject.

10. The document *A* itself shews that the Plaintiff had advanced to Defendant rupees 75; the opposing evidence in this point cannot be relied upon for a moment in opposition to the entry on the admitted karar.

11. I affirm the original decree and dismiss this appeal with costs against the Appellant.

THE 7TH JANUARY 1857.

Appeal Suit No. 515 of 1856.

Appeal from the decision of Mr. W. Stuart, District Moonsiff of Ernaad, dated 9th August 1856.

Poothenpidikil Paynil Koyahamoo Moideen,	Plaintiff,	Appellant.
Mellathil Koyamaha,	1st Defendant,	1st Respondent.
His brother Ahmod,	2d do.	2d do.
Koyamooh,	3d do.	3d do.
Moideen,	4th do.	4th do.
Oonian,	5th do.	5th do.
Paynil Oony Mamod,	6th do.	6th do.
Paynil Palakel Avaran Moideen	7th do.	7th do.
Manakat Shreedavy Attamar,	10th do.	8th do.
Mangotsherry Madavan Namboodrypaad,	11th do.	9th do.

1. The plaint sets forth that in the month of Menon 1013 the Plaintiff received from the deceased Mamod Cootty, the father of the 1st to 5th Defendants, 60 parras of paddy and pledged with the aforesaid Mamod Cootty a land the kanom property of Plaintiff, and the suit was instituted for the restoration of the pledged property on payment to the Defendants of the amount borrowed.

2. The 1st to 5th Defendants were exparte.

3. The 6th Defendant in his answer denied both the Plaintiffs and the 1st to 5th Defendants' right over the land sued for, pleading that the land is the kanon property of his father the 7th Defendant.

4. The 7th Defendant in his answer pleaded that the kanom right over the land sued for was assigned by the Plaintiff on teer to the Mamod Cootty from whom he, 7th Defendant, obtained the kanom right on teer and renewed the kanom deed with the jenmee.

5. The 8th, 9th, 10th and 11th Defendants did not answer.

6. The Ernaad Moonsiff dismissed the suit remarking that the Plaintiff had adduced no proof whatever that he pledged the plaint property to the deceased Mamod Cootty; that the evidence of Plaintiff's witness was contradictory and opposed to the state-

ments of the Plaintiff himself; that considering the time that has elapsed since the alleged mortgage of the property without payment to Plaintiff of any porapaad no reliance can be placed on the Plaintiff's assertion.

7. The Plaintiff appeals, urging; 1st, that as he retained the kanom deed of the property there was no occasion for any document being taken from the pledgee; 2d, that the objections taken by the Moonsiff to the evidence adduced by Plaintiff are unsound; 3d, that the delay arose from Plaintiff not having the means to redeem the property; 4th, that the Moonsiff in Original Suit No. 37 of 1855 affirmed the Plaintiff's kanom right, therefore it was not proper for him to dismiss the suit.

8. The Respondents are exparte.

JUDGMENT.

9. The alleged mortgage of the property took place about 16 or 17 years ago, and Plaintiff brought forward two witnesses, to depose to the transaction.

10. Their evidence is discrepant and at variance with the statements of the Plaintiff; no documentary evidence was filed. This evidence the Lower Court discredited, the Moonsiff observing that looking at the apparent age of one of the deposing witnesses, he could only have been about 10 or 11 years old when the transaction to which he deposes took place.

11. The Plaintiff's suit was based upon the mortgage, but the evidence as to the fact of any such mortgage having been effected being totally devoid of credit, the Lower Court was correct in dismissing the suit. The decree alluded to in the 4th objection urged has nothing to do with the point at issue in this case.

12. Seeing no grounds for calling into question the correctness of the Lower Court's decree, the Court affirms the same and dismisses this appeal with costs against the Appellant.

THE 7TH JANUARY 1857.

Appeal Suit No. 487 of 1856.

Appeal from the decision of W. Holloway, Esq., Acting Sub Judge of Calicut, dated 31st March 1856.

Keikekovilagatha Valia Rajah; by Vakeel Venguideshwarayen, } (Plaintiff,) Appellant.

Mr. George John Glasson; by Vakeel Kunden, } (Defendant,) Respondent.

1. The original suit was instituted to recover rupees 8,306-8-7, alleged to be due to Plaintiff by the Defendant on account of eight months and six days' hire of a ship and other dealings according to a bipartile contract alleged to have been executed by them on 23d October 1851.

2. In his answer the 1st Defendant admitted the execution of the karar; the taking possession of the ship by him; but in bar of the plaint demand pleaded that all the sums now claimed by Plaintiff were paid and all accounts between them were adjusted and a receipt given in March 12th 1853, otherwise the Plaintiff's demand would be correct.

3. It is unnecessary to allude to the 2d and 3d Defendant's answers.

4. Points were recorded on the 22d January 1856.

5. Plaintiff filed 3 exhibits, *A*, copy of the karar, *B* and *C*.

6. 1st Defendant filed 5 exhibits. No. 1 receipt for 192-77 reas.

7. The Acting Sub Judge dismissed the suit with costs remarking "that he felt satisfied that the balance was received on Plaintiff's account by Plaintiff's agent in pursuance of Plaintiff's requisition upon Defendant."

8. The Acting Sub Judge puts little weight upon the evidence of the Plaintiff's witnesses "who were men that can only state that the matter could not have happened because they did not hear of it."

9. As regards the 1st Defendant's evidence he remarked, "we have then the testimony of Defendant that these vouchers

were produced and the balance due paid in pursuance of two letters of the Plaintiff and received from the Plaintiff by one Krishnayen whose receipt one of them bears."

"The only difficulty," the Sub Judge observed, "is that the 2d letter declares the money due on account of ebony, but the amount is the same as that *claimed* in the first letter on account of the brig, and we have the Defendant's oath that the letter was an answer to one of his own, *Exhibit* 2, in which this sum is stated to be the balance due on account of the brig "Kiradra," and that he had no ebony account with the Plaintiff;" the Sub Judge "saw no reason for discrediting this evidence, and he felt clear that Kristnayen did in this matter act as the Plaintiff's agent."

10. Dissatisfied with the conclusion arrived at by the Acting Sub Judge the Plaintiff appeals calling into qnestion the correctness of the Acting Sub Judge's appreciation of the evidence, and urging that no settlement of accounts was made, and that no receipt was granted by Plaintiff upon an adjustment of accounts between Plaintiff and Defendant, for the expenses incurred on the brig.

11. The Defendant upholds the original decree.

JUDGMENT.

12. The point recorded for the Defendant was "to shew that as alleged an adjustment of accounts and of all outstanding claims took place between himself and Plaintiff, either personally or through an accredited agent of the said Plaintiff and "the Plaintiff may disprove this alleged settlement in any way."

13. The "onus probandi" rested upon Defendant, because in his pleadings he has admitted all the facts urged in the plaint, but stated that as the accounts between the parties were adjusted and a receipt given in March 1853, nothing is due on the transaction set forth, "otherwise the Plaintiff's demand would be correct."

14. It now becomes the duty of the Court to consider the evidence adduced by Defendant to prove that the accounts were adjusted and that the balance due was rupees 192-77 reas, which sum was duly paid and receipt granted.

15. The oral evidence as to any adjustment having taken place is altogether unsatisfactory; the 1st witness states in fact that no balance was struck and no settlement took place in his presence.

16. Defendant deposes that a settlement was effected and he

has filed No. 1 as his chief documentary evidence in support of his plea.

The Court on reference to that document finds it to be a letter addressed by Plaintiff to 1st Defendent on the 12*th March* 1853, in which he says, "I hope you will on perusal of this send me the (192) one hundred and ninety two and seventy-seven reas which *you told me* that you *have at present* in your possession, *from the accounts* of my *brig Keerata Roodren*; same time you will receive this receipt in the bottom of the letter. If you can send by him I will think as I received." Now it is quite clear that these words acknowledge *no adjustment* of accounts whatever, between Plaintiff and 1st Defendant regarding the affairs of the brig; the letter merely says the rupees 192 reas 77 which "*you told* me" these words manifestly shewing that no *joint adjustment* had then taken place, but only that there was a sum due "*from the accounts.*"

Nothing beyond this letter appear to have taken place *till*, the Court presumes, 1854.

17. Exhibit 2 purports to be a letter addressed to the Plaintiff by the Defendant, in which he states his intention to wait upon the Plaintiff and "bring your highness the sum of one hundred and ninety-two rupees 77 reas as per your letter dated 15th (12th) March 1853, being balance due as per *the Kooratra Roodren's account* with *you.* Here again there is nothing said of the alleged adjustment, merely the vague assertion "as per the Kooratra Roodren's account with you," which means, as far as the Court can judge, that the accounts were still open; but the exhibit bears no date and it is ignored by the Plaintiff, who says he never got it and it was only found in Kristniyen's possession.

18. Exhibit No. 3, dated the 27th February 1854 purports to be an answer to Exhibit No. 2; in this document the words are "I shall be glad you will do the goodness of sending the balance in my *ebony account*, say one hundred and ninety-two rupees and seventy-seven reas as you stated in your letter by my writer Kristnayen; same time I hope you will keep this letter as a receipt for the said sum as I have received." The Plaintiff pleads that his signature to this letter was surreptitiously obtained; but of this there is no proof; it is manifest from the wording of it that it was written by the same writer who wrote No. 1, the words "same time" occurring in both.

19. The Defendant pleads that he had no ebony account at all; if so, why then did he not, on receipt of this letter, ascertain the meaning of the demand thus made upon him; but what does he do under the circumstances? he takes the letter which treats of a different thing altogether from Exhibit No. 2 and reverts back

to No. 1 the Rajah's letter of the 12th March 1853, and on the back of that document a receipt is granted signed "D. V. Kristnayen" for one hundred and ninety-two rupees and seventy-seven reas as per his highness' order; for what? the ebony or "from the account of my brig Koorata Roodren;" this is no receipt at all upon a final adjustment of the accounts of the brig "Koorata Roodren," in fact the Court holds that these exhibits go no way at all to establish the point that "an adjustment of accounts and of all outstanding claims took place between Defendant and Plaintiff either personally or through an accredited agent of the said Plaintiff."

20. The Court must demand better proof than this before it can come to the conclusion that a final adjustment took place. When did it take place and before whom? no attested copy of these final accounts has been filed; the transactions were not petty ones, but for heavy sums laid out; surely if an adjustment had taken place and a balance been struck, attested copies would have been written out; or, at all events, a formal receipt on stamt paper would have been granted, but there is no such thing on record, merely the unproven receipt granted by Kristnayen upon the back of letter which in some degree tallies with the Exhibit No. 2, which the Plaintiff denies having received. It matters not whether much or little weight is placed on the Plaintiff's witnesses' statements; the Court must have good and sufficient proof that the accounts were finally adjusted and a formal receipt granted, and this proof is manifestly wanting. Being unable to concur with the view of this case taken by the Acting Subordinate Judge, the Court reverses the original decree and awards to the Plaintiff the sum of rupees 6,842-3-8 disallowing interest, because, in the opinion of this Court, the accounts have never been adjusted.

21. The Defendant is assessed with the costs both in original and appeal less the amount of costs on the interest disallowed.

THE 9TH JANUARY 857.

Appea Suit No. 458 of 1856.

Appeal from the decision of Syed Mahadee Alum, Sudr Ameen Moofty of Calicut, dated 9th June 1856.

Chengarcherry *alias* Naraina *alias* Poona Sherry Namby ; by Vakeel Amboo Podwall, } (1st Deft.,) Appellant.

Koykot Padinjar Kovilagate Valia Tambooratty ; by Vakeel Ramen Menon, } (1st Plff.,) 1st Respondent.

Meletodyil Ithraicha Nedoongady..... (2d Deft.,) 2d do.

1. It appears from the plaint that the 1st Defendant had assigned upon kanom to the 2d Defendant a considerable property, part of which only was made over to 2d Defendant, who subsequently sold his kanom right to Plaintiff with ennuck to the 1st Defendant's address ; the 1st Defendant failed to act up to the enuck, and Plaintiff sued both Defendants for the recovery of the kanom amount with interest, the same to be realized by sale of the mortgaged property or from the Defendants.

2. The 1st Defendant in his answer pleaded that the suit was a collusive one between Plaintiff and 2d Defendant against whom he, 1st Defendant, had instituted Original Suit No. 427 of 1855 in the Pattamby Moonsiff's Court for recovery of pattom and restoration of the property ; that the assertion that 2d Defendant got possession of only a very small portion of the kanom property is untrue.

3. The 2d Defendant admitted the plaint.

4. The Principal Sudr Ameen decided that the kanom amount with interest and all costs should be paid by the 2d Defendant; that the alleged transactions between 1st and 2d Defendant will be determined in the suit before the Pattamby Moonsiff and are in no way connected with this suit.

5. The 1st and 2d Defendants to bear their own costs.

6. The 1st Defendant appeals urging that to assess him with his costs was improper, the suit being a collusive one between Plaintiff and 2d Defendant; that the latter should have borne his costs.

7. The 1st Respondent is exparte.

8. The 2d Respondent supports the original decree.

JUDGMENT.

9. The Lower Court has shewn no good cause in its decree for assessing the 1st Defendant with costs. The 1st Defendant pleaded that the suit was collusive and brought in opposition to one instituted by him before the Pattamby Moonsiff for the restoration of the property and the Lower Court altogether freed the 1st Defendant in its decree making the 2d Defendant answerable in full; consequently practice and equity demand that 2d Defendant should bear all costs, and the Court consequently modifies the original decree in this respect and assesses the 2d Defendant with 1st Defendant's costs in the original suit and with all the costs in this appeal.

THE 9TH JANUARY 1857.

Appeal Suit No. 578 of 1856.

Appeal from the decision of Mr. W. Stuart, District Moonsiff of Ernaad, dated 12th August 1856.

Tengery Cheria Kanen Nair; by Vakeel Mamoo Koya, } (Plaintiff,) Appellant.

Ponakundy Kamod,..... (2d Deft.,) 1st Respt.
Mamod,..... (3d do.) 2d ditto.
Moyen,..... (4th do.) 3d ditto.
Titacha Oomah, female ; by Vakeel Puckoo, } (5th do.) 4th ditto.

1. The original suit was instituted for the recovery of rupees 25-7-7, principal with interest due on a document granted by the 1st Defendant to the Plaintiff for rupees 25 on the 2d Vrichigom 1030.

2. The 1st Defendant's younger brother owed to Plaintiff rupees 25 for paddy purchased from Plaintiff, and by the bond in question the 1st Defendant took upon himself the payment of the aforesaid sum within 15 days and would redeem the document granted to Plaintiff by Abdoolah, 1st Defendant's younger brother, for 143 parras 5 edungalies. Having failed to act up to the

conditions of the bond, the Plaintiff sued for the recovery of the above amount with interest.

3. The 1st Defendant in his answer denied having granted any document to the Plaintiff pleading also that he was not cognizant of any dealings between Abdoolah and Plaintiff.

4. Subseqnent to filing the answer, the 1st Defendant died, and the remaining Defendants were included as his heirs.

5. The 2d and 5th Defendants answered supporting the answer of the 1st Defendant, adding that the 1st Defendant left no private property.

6. The 3d and 4th Defendants did not answer.

7. The Ernaad Moonsiff dismissed the plaint demand with costs considering the document *A* the alleged deed granted by the late 1st Defendant a suspicious document inasmuch as it was attested by no witnesses ;

1st. That the document does not specify that 1st Defendant had undertaken the payment of the debt due by Abdoolah; that if this had been the case the 1st Defendant when granting *A* would have obtained back the document granted by Abdoolah ; that the reason assigned by the witnesses for their presence when the document is said to have been granted cannot be depended upon.

8. Plaintiff appeals, urging,

1st. That as the document *A* conditioned to pay the sum within 15 days there was no cause for attesting the document with witnesses ;

2d. That the very fact of the Defendant promising to pay Abdoola's debt within 15 days of itself shewed that he had undertaken the debt ;

3d. That the practice in force is that if a party undertake the debt of another, the prior document can only be returned on payment of the debt ;

4th. That the reasons given by the witnesses for their presence were sufficient.

9. The Respondents are exparte.

JUDGMENT.

10. The document *A* is in the light of a promissory note and

as it specified that the debt was to be liquidated within 15 days, the Court considers that the absence of attesting witnesses does not go to vitiate the instrument.

11. The Court coincides with the 2d objection taken in appeal. The very fact of the promise to pay the debt due by Abdoolah is evidence that 1st Defendant undertook it; there was no occasion for any express stipulation beyond the simple promise.

12. The Court also holds that the 3d objection to the decree is also tenable. The original debt bond would in practice be retained until the 1st Defendant fulfilled the condition of the document *A*; *B* was Plaintiff's hold over the 1st Defendant.

13. The objections taken by the Moonsiff to the Plaintiff's witnesses' reasons for their being present at the time are not of weight. The Court being of opinion that the document *A* was granted by the deceased 1st Defendant, and that his heirs are responsible for the same, their Vakeel having admitted that 2d and 5th Defendants are heirs to the property left by 1st Defendant, which fact is deposed to by their witnesses; it therefore reverses the original decree and awards the sum sued for against all the Defendants.

14. The 2d to 5th Defendants are assessed with costs both of original and appeal suits.

THE 9TH JANUARY 1857,

Appeal Suit No. 489 of 1856.

Appeal from the decision of Mr. J. D'Silva, District Moonsiff of Calicut, dated 23d June 1856.

Malamel Kolay Ramen Nair,..... (Plaintiff,) Appellant.

Komakel Tamoo Nair,..... (1st Deft.,) 1st Respt.
Chittarikel Tamoo Panikur,..... (2d do.) 2d do.
His Anandiraven Ookindoo Paniker,... (3d do.) 3d do.
Chittarikel Ittirarapa Paniker,..... (4th do.) 4th do.
Keyekinyagatha Palanjerry Narainen Namboodry; by Vakeel Tamoo Menon, } (5th do.) 5th do.

1. The original suit was instituted for the recovery of fanams 104, being arrears of porapaad due from the 1025 to 1028 inclusive on a land, the jenm property of the Plaintiff and assigned upon kanom to 1st Defendant for Chittarikel Kelloo Pani-

kur in the month of Kombom 1016 for fanams 156; that the property was rented to 1st Defendant who executed a pattom chit in favor of Plaintiff engaging to pay a porapaad of 29 parras of paddy after deducting the interest on the kanom from the rent; that the rent was paid only up to the year 1024.

2. The 1st Defendant in answer admitted the execution of the pattom chit, but pleaded that he only acted for Kelloo Panikur and that 2d and 3d Defendants are answerable.

3. The 2d and 3d Defendants also admitted 1st Defendant's answer, merely pleading that the porapaad had been paid up to 1027; that Kelloo Panker's kanom document has been destroyed by fire.

4. The 4th Defendant in his answer urged that the suit was a collusive one between Plaintiff and 1st to 3d Defendants; that the land sued for is the jenm property of his tarwaad; that his deceased karnaven Kandoo Paniker paid the revenue thereof and the registry is in his name; that subsequent to his decease the property is being managed by him, 4th Defendant; that 2d and 3d Defendants are at enmity with him regarding tarwaad affairs.

5. The 5th Defendant in his answer contended that the property is the jenm property of his tarwaad and was assigned to the late Kandoo Paniker on kanom; that the Plaintiff or Kelloo Paniker has no right whatever to the property.

6. The Lower Court in its first decree was of opinion that unless the Plaintiff's *alleged purchase* of the land in question, which is strongly opposed by the 4th Defendant, is first confirmed in a regular suit, no satisfactory conclusion can be arrived at respecting the Plaintiff's present claim to recover possession upon the strength of the pattom chit *A* and accordingly dismissed the suit.

7. The Plaintiff appealed under Appeal Suit No. 404 of 1854.

8. The Acting Subordinate Judge remanded the case on the ground that the Moonsiff had before him the Plaintiff alleging that he purchased the jenm right from C. *Kelloo* Paniker and the 4th Defendant who denied that transaction, alleging that, as the heir of Kandoo Paniker, the property still belonged to his tarwaad; that it is clear that no suit could be required for establishment of a right by purchase for it; *B*, the jenm deed was genuine. Plaintiff had acquired that right from the person under whom his opponent claimed.

The Moonsiff was therefore directed to pronounce a clear

opinion upon the document *B*, and the right conveyed to the Plaintiff.

9. In his revised decree the Moonsiff dismissed the case, being of opinion that the jenm deed *B* was a suspicious document, the ola on which it is engrossed having been sold to an uninterested party; that in order to make it assume the appearance of age, it had evidently undergone some process; that the writing in the body of the document is of a fresh appearance as contrasted with the endorsement of the sale of the stamp; that the writing is legibly inscribed so that the style might not cut deep into the ola; that in the year 1826 and until the Sudr Udalut recorded their proceedings dated the 10th July 1843, deeds of sale of landed property of any value exceeding rupees 64 used to be drawn out indiscriminately upon one rupee stamp and never specified, the sum paid for the property; whereas the document *B*, is upon quarter rupee stamp and does specify the sum, and this difference the Moonsiff thinks arose from the difficulty in procuring an old stamp of one rupee and tends to strengthen the belief that the said document is of a recent fabrication; that the register remains in the name of Kandoo Paniker. The Moonsiff came to the conclusion that he could not believe that Kelloo Paniker sold the land and re-obtained it on kanom from the Plaintiff and considered that Plaintiff and the three first Defendants had colluded together and made out a false case.

10. The Plaintiff appeals;

1st That the fact of the document *B*, being engrossed on the stampt cadjan sold to another party, is not objectionable;

2d. That no fraud had been practised regarding that document;

3d. That it being customary to execute documents and shewing in them the amount for which they are executed, is not likewise an objectionable procedure;

4th. That the remark as to the revenue registry is of no weight as will appear by Circular Order Sudr Udalut dated, 17th September 1838.

11. The 1st, 2d and 3d Respondents exparte.

12. The 4th Respondent answers upholding the original decree.

13. The 5th answers to the same effect.

JUDGMENT.

14. The Court has carefully perused the original decrees and

weighed the objections taken by the Lower Court to the exhibit *B*, which document the Court has also subjected to scrutiny, and it is of opinion that the conclusion come to by the Moonsiff is sound.

The ollah has evidently been tampered with and the writing of the deed is new as compared with the endorsement.

15. The departure from the usual custom as to value of stamp used in such transfers is also deserving of much weight as well as the pregnant fact that the land still stands registered as the jenm property of Kandoo Paniker; but the Moonsiff did not rest upon this alone as his ground for rejecting *B*, but mentioned it as a corroboratory fact.

16. The Court is satisfied from a perusal of the pleadings that the suit is a collusive one between Plaintiff and the first 3 Defendants.

I affirm the original decree and dismiss this appeal with costs against the Appellant.

THE 9TH JANUARY 1857.

Appeal Suits Nos. 512 and 525 of 1856.

Appeal from the decision of W. Holloway, Esq., Acting Subordinate Judge of Calicut, dated 26th July 1856.

512. A. S. 552

Koonata Hajee Koya; by Vakeel Ramen Menon, } (1st Deft.,) Appt. Respt.

Valiaveetil Abdoola Koya; by Vakeel Seshom Putter, } (Plff,) Respt. Applt.

1. The plaint set forth that Coya Cootty the father of the 2d to 7th Defendants was indebted to Plaintiff and 1st Defendant; that the latter purchased from Coya Cootty 59 logs of teak timber for rupees 2,055-9-10 and executed a document to the Plaintiff and another to Coya Cootty, by which he (1st Defendant) agreed to pay the said sum to the Plaintiff provided that if upon an adjustment of Plaintiff's accounts with Coya Cootty the same should be found due to Plaintiff by the said Coya Cootty, otherwise the above amount was to be paid to Coya Cootty himself

less the amount due by Coya Cootty to 1st Defendant ; Plaintiff's document is dated Dhanoo 1013. The document granted to Coya Cootty is dated 25th Dhanoo 1014 ; of these documents Plaintiff has filed his document marked *A*.

2. Subsequently on the 3d Toolam 1026 Coya Cootty addressed on enuck to the 1st Defendant requesting him to deduct the sum due to him (1st Defendant) and to pay the balance to Plaintiff.

3. The 1st Defendant failed to do so, the original suit was instituted for the recovery of rupees 896-7-4 with interest 440-2-8 in all rupees 1,336-10-0, from which, after deducting rupees 500 paid to Plaintiff by 1st Defendant by Coya Cootty's consent, the balance with equal interest, in all rupees 1,673-4-0.

4. The 1st Defendant in his answer traversed the plaint pleading that he neither purchased the logs of timber or granted the document as set forth in the plaint; that the suit is barred by the statute of limitation.

5. The 2d, 3d and 5th Defendants admitted the plaint.

6. The 4th Defendant supported the 1st Defendant's answer.

7. The Sudr Ameen considered the Plaintiff's evidence satisfactory and adjudged to Plaintiff the sum of rupees 1,315-10-6 disallowing from the original sum sued for rupees 440-2-8.

8. Appeal Suit No. 512.—The 1st Defendant appeals urging;

1st. That the suit is barred by the statute of limitation;

2d. That the Document *A* is on plain paper and the attesting witnesses to the document were not examined;

3d. That if he, 1st Defendant, owed Coya Cootty any sum there was no reason for Coya Cootty to address to him the letter No. 1. Plaintiff answers that the statute of limitation is barred by the enuck *B* dated 1026. 2d, that the writer of the Document *A* was examined, and of the attesting witnesses one is dead, and the other has been gained over by 1st Defendant.

9. Appeal Suit No. 525.—Urging that from the 500 rupees given by 1st Defendant to him, Plaintiff, prior to the enuck rupees 400 were taken for the interest due on the principal due by Coya Cootty, and the balance rupees 59-13-4 went to the principal; that accordingly to disallow this sum was incorrect; prays therefore that the original decree be modified on this point and the said sum awarded to him.

10. The Respondent answers.

JUDGMENT.

11. As regards the objection taken in appeal that the suit is barred by the statute of limitation, the Court holds it to be untenable.

12. The document *A* states that if upon adjustment of accounts between Coya Cootty and Plaintiff there should be a balance due to Plaintiff, then the 1st Defendant binds himself by *A* to pay the balance to Plaintiffs.

13. The accounts were not adjusted and Coya Cootty grants the enuck *B* to 1st Defendant to pay to Plaintiff the balance after deducting the amount due to 1st Defendant by Coya Cootty. Unless the enuck *B* had been granted the Plaintiff could not come upon the 1st Defendant by means of *A*, which was of value only after an adjustment; the time for calculating the period must therefore run from the date of *B* 1026.

14. Of the attesting witnesses one is dead and the other has been gained over, but the writer of the document was examined and deposed to the document and it was established also by other evidence satisfactory to the Court.

15. The 3d objection in appeal is of no force.

16. The Court consequently sets aside the appeal objection and affirms the original decree dismissing Appeal Suit 512 with costs against 1st Defendant.

17. Appeal Suit No. 525.—The Court must uphold the original decree as regards the disallowing of rupees 440-2-8, because the 500 rupees was obtained from the 1st Defendant before the enuck was granted which alone gave the Plaintiff authority to proceed against the 1st Defendant to sue upon the document *A*, consequently the Plaintiff had no right to seize portion of the 500 rupees for interest on a sum which at that time he had no right to call upon the Defendant to pay as before observed no adjustment of accounts between Plaintiff and Coya Cootty having taken place and the sum being paid before the enuck *B* was granted.

The Court consequently dismisses the appeal with costs against the Appellant.

THE 14TH JANUARY 1857.

Appeal Suit No. 416 of 1856.

Appeal from the decision of Vydenatha Shastry, late Pundit Sudr Ameen of Calicut, dated 20th December 1855.

Mana Vickrama Zamorin, Rajah of Calicut,.....	(Plaintiff,)	Appellant.
Maroodoor Punguen Nair,.....	(1st Defendant,)	1st Respondent.
Shungaren Nair,.....	(2d ditto)	2d ditto.
Ittinan Nair,.....	(3d ditto)	3d ditto.
Oonamen Nair,.....	(4th ditto)	4th ditto.
Appah Putter's son Aya Putter,..	(5th ditto)	5th ditto.

1. This is an appeal from a decision passed by the Pundit Sudr Ameen dismissing the Plaintiff's suit for restoration of 10 lands the jenm property of the Plaintiff, and assigned upon kanom to the Defendants 1st to 4th of fanams 1,845, but awarding to Plaintiff the arrears of pattom sued for up to date of plaint and also one year's niguidy, for recovery of which a supplemental plaint was filed.

2. In bar of the plaint demand the Defendants pleaded that the lands were assigned on perpetual tenure and the Lower Court considered that they proved that point, the document No. 1 shewing this to have been the case.

3. The grounds of appeal are ;

1st. That the document No. 1 is a false one ; that knowing the Defendants were about to get up document, Appellant moved the Court to call upon the Defendants to produce the document, but they failed to do so till after 3 years ;

2d. That the Appellant does not dispute that the Defendants may have a land named as per Exhibit No. 6, but no portion thereof is included within the plaint property ;

3d. That if the Defendants had a perpetual kanòm the fact would have been set forth in exhibit *D* ;

4th. That the niguidy receipts filed are false ; that after the institution of the suit Plaintiff paid one year's niguidy; hence it is improbable that Defendants would pay revenue pending the issue of the suit.

4. The 2d and 4th Defendants answer ;

1st. That the Document No. 1 was pledged with a third party who was gained over by the Rajah ; hence the delay in producing No. 1 ;

2d. That the receipts filed shew that the Respondents paid niguidy from 1028 to 1030.

5. The remaining Respondents exparte.

JUDGMENT.

6. On a review of the proceedings in this case the Court finds there are four points to be considered ;

1st. Can the plaint property be redeemed or not ?

2d. Are the Defendant's private lands intermingled with the plaint property ?

3d. Was the niguidy after 1028 paid by the Plaintiff or Defendants ?

4th. Whose property are the tanks ? and, lastly, the amount of koykoor.

7. As regards the first point. I am of opinion that the document No. 1 is a very suspicious exhibit. It was not produced till long after the institution of the suit, and the reason assigned for the delay is not satisfactory ; further than this, however, I consider that if the Defendants had enjoyed the lands on perpetual tenure, the fact would have been mentioned in Exhibit *D* being a cabool chit, a document granted by 2d to 5th Defendants in which the lands sued for are set down as the kanom property of the tarwaad. I have no doubt that the property was assigned on kanom only and of course it is consequently redeemable.

8. As regards the 2d point, the boundaries shewn in the plaint coincide with those laid down in Exhibit *A* maroopatom chit, and they also nearly coincide with the boundaries specified in a rauzeenamah filed by these Defendants in Original Suit No. 57 of 1845 on the Pundit's file, and from the plan on record the Court considers that there is no proof that the Defendant's lands are included within the plaint property.

9. Touching the 3d point it appears that the Plaintiff paid the niguidy for 1027 promising that he would do so in future; and

considering the fact of his having filed a supplemental plaint for the recovery of the niguidy paid, I consider the assertion of the Defendants that they paid the niguidy subsequently open to much suspicion.

10. As regards the tanks. It appears from the Exhibits No 1 and *A* that the tanks were in existence when the lands were assigned; the assertion that the Defendants made them cannot be relied upon.

11. Touching the amount of koykoor the Defendants in Appeal Suit No. 92 of 1855 admitted that the koykoor and cultivation expenses on the land amounted to rupees 1,600 and the Ameen deputed by the Lower Court valued them at rupees 1,336-10-11, and it does not appear that either party impugned that account, for it was filed in September and the decree was not passed till December; the Court therefore feels satisfied that the valuation is a fair one.

12. The Court therefore reverses the original decree and awards restoration of the land sued for with pattom up to the date of decree and payment of niguidy from 1027; that for one year being rupees 248-5-0 on payment by Plaintiff of the kanom amount.....rupees 527 2 3

Koykoor and improvements.....	1,336	10	11
Value of houses.....	120	0	0
Total rupees..	1,983	13	2

13. The Defendants 1st to 4th are assessed with all costs both of original and appeal suits less the expenses incurred by the deputation of an Ameen, which are to be borne by Plaintiff.

THE 16TH JANUARY 1857.

Appeal Suit No. 548 of 1856.

Appeal from the decision of Mr. W. Stuart, District Moonsiff of Ernaad, dated 26th August 1856.

Payanil Koyamoo Moideen, (1st Defendant,) Appellant.

Mangotshery Madaven Namboodripaad; by Vakeel Sheshen Putter, } (Plaintiff,) Respondent.

1. The original suit was instituted for the recovery of rupee 1-15-3, value of paddy due as porapaad on 3 lands the jenm property of the Plaintiff and assigned by him on kanom to the Defendant for rupees 10-4-0 in the month of Magarom 1027, the mortgagee stipulating to pay a porapaad of 3 parras and 1 edungaly of paddy. Having failed to pay the rent the Plaintiff sued for the balance and restoration of the property on payment of kanom.

2. In bar of restoration the 1st Defendant pleaded that he regularly offered the porapaad, but the Plaintiff in order to get him into trouble refused to receive it; that having expended about 10 rupees when he obtained the kanom the property was not redeemable within 12 years; that he has a vettoo kanom claim of 100 parras of paddy.

3. The 2d Defendant was exparte.

4. The Moonsiff awarded restoration of the property on payment of the kanom and arrears of porapaad, the evidence to prove that the porapaad was offered and refused being very unsatisfactory; the Moonsiff further remarked that the plea of having paid cai cooly would not bar restoration the porapaad having been allowed by Defendant to fall into arrears; that from the Adikary and Ameen's report which no one disputed, it did not appear that the Defendant had any vettoo kanom claim on the property.

5. The 1st Defendant appeals, arguing; 1st. That his witnesses proved that he had offered the porapaad; 2d. That upon the hypothesis that the porapaad was in arrears, that is no ground for calling upon him to restore the property within 12 years, he having paid cai cooly; that this doctrine is laid down in the Sudr Udalut's diary dated February 1855 and is in conformity with the kanom and jenm rules.

6. Respondent answers.

JUDGMENT.

7. The plea urged that the porapaad was offered and refused is a very unlikely one, for the Defendant gives no adequate reason why the landlord should refuse his rent, besides the alleged refusal to receive the porapaad was not proved. But in fact the 2d objection in appeal in a manner admits that the porapaad was in arrears, for Appellant goes on to say "supposing the rent was in arrears" and then he alludes to the Sudr Udalut's diary of February 1855 and argues that this order declares that the land cannot be restored within 12 years even if the rent has not been paid.

8. Appellant is in error as regards the statement. The order alluded to requires the Court to conform with the ancient usage in force in Malabar between landlord and tenant, and the usage is that if a tenant allows the rent due to fall into arrears the landlord is fully entitled to proceed against him for restoration within 12 years *even* although cai cooly had been paid.

9. I affirm the original decree and dismiss this appeal with costs against the Appellant.

THE 16TH JANUARY 1857.

Appeal Suit No. 529 of 1856.

Appeal from the decision of Mr. W. Stuart, Acting District Moonsiff of Ernaad, dated 14th August 1856.

Koonatha Oomaya *alias* Mangaratodyil Bee Oomah, } (2d Deft.,) Appt.

Korankandatha Ismal Moolla,.....(Plff.,) 1st Respt.
Coonhy Mamod,.....(3d Deft.,) 2d do.

1. This is an appeal from the decree of the Ernaad Moonsiff awarding to the Plaintiff ½d share of the property left by one Achoo Oomah deceased, the sister of the Plaintiff and 3d Defendant's father and mother of the 1st and 2d Defendants.

2. The 1st Defendant was exparte.

3. The 2d Defendant pleaded that Achoo Oomah before her death sold her kanom right over the paramba part of which was purchased by him in 1019 and the kanom renewed with the jenmy in 1029; that at the time of her death Achoo Oomah possessed no property. The 3d Defendant supported the plaint.

4. The grounds upon which the Moonsiff awarded ⅓d share of the property were that beyond the 2d Defendant's witnesses' statements there was no other evidence to prove that Achoo Oomah had sold her kanom before she died; that the document No. 1 (renewed deed) does not specify that the deed was renewed after the yennuck granted by Achoo Oomah had been received; that the document No. 1 has been collusively got up by 2d Defendant with the jenmy; that if it was a bonâ fide document, the Defendant would have cited the jenmy as a witness; that the delay that has taken place in renewing the deed is of itself most suspicious.

5. The grounds of appeal urged are;

1st. That Plaintiff filed no documentary evidence whatever; hence the Court should have accepted document No. 1;

2d. That it is not customary to enter into renewed deeds that the yennuck had been accepted;

3d. That his evidence established Exhibit No. 1;

4th. That as the property was in his possession, the delay in renewing the deed is of no importance and cannot go against the document.

6. The 1st and 2d Respondents answer.

JUDGMENT.

7. The fact that no documentary evidence was filed by the Plaintiff does not in any way enhance the value of that adduced by the Defendant.

8. Considering the fact of Achoo Oomah being the Appellant's mother one would have expected that the renewed deed would have alluded to the fact of 2d Defendant having obtained his mother's claim, but even the absence of this alone is of less importance than the suspicious delay in 2d Defendant's obtaining the alleged renewed deed, if it was a bonâ fide transaction with the jenmkar, why has he not cited to prove the granting of the renewed died.

9. The relationship having been admitted as above the fact that Achoo Oomah was seized of property of the value of fanams 300 including kanom Coorycoor and value of a house, the Lower Court in the absence of better evidence to prove that she died leaving no property decreed properly in awarding ⅓d share of the property to Ptaintiff, but the Court considers it better to modify the decree so far as to award to Plaintiff fanams 100 in default of property of that value being made over.

10. The original decree is with the above slight modification affirmed and this appeal dismissed with costs against the Appellant.

THE 16TH JANUARY 1857.

Appeal Suit No. 536 of 1856.

Appeal from the decision of Mr. W. Stuart, District Moonsiff of Ernaad, dated 15th August 1856.

Karoovayoor Narainen Moossada; by Vakeel Seshen Putter, } (Plaintiff,) Appellant.

Mangalatha Coonjoony Nair, ...(2d Deft.,) 1st Respt.
Shangaren Nair,.....(3d ditto) 2d ditto.

1. This is an appeal from the decree of the Ernaad Moonsiff dismissing the Plaintiff's case, in which he sued for restoration of certain lands which in the month of Medom 1024 were assigned by him on kanom to the 1st Defendant for rupees 35-11-5, the mortgagee stipulating to pay a porapaad of 9¾ vishoms 3 edungalies of paddy and 1 pot of tire; this porapaad having as alleged fallen into arrears, the Plaintiff sued for the balance due rupees 2-11-7 and restoration on payment of kanom.

2. 1st Defendant admitted that the lands were held upon kanom as set forth, but pleaded that the porapaad was not in arrears, and that having paid cay-cooly, the property was not redeemable within 12 years.

3. The Moonsiff being of opinion that the Plaintiff's evidence to prove that the porapaad was in arrears was not satisfactorily dismissed the suit.

4. In appeal the Plaintiff questions the justness of the Court's appreciation of the evidence.

i. That the remark regarding the non-filing of Plaintiff's accounts is no force the accounts having been prepared by himself;

ii. That the individual called Ramen Nair to whom the Defendant says he paid the pattom for 1028-29 is not a friend of his, but of the Defendant's; hence the reason why he was not cited by Plaintiff.

5. Respondents exparte.

JUDGMENT.

6. The Plaintiff's evidence to prove that the porapaad had not been paid is of the most unsatisfactory nature. The 1st witness deposed that his knowledge of the 1st Defendant's default to pay the porapaad was derived from the Plaintiff's own account, and the 2d witness stated that after the suit was instituted the Defendant mentioned to him that he did owe the Plaintiff porapaad. Now it is clear that evidence of the nature is quite inadmissible and unworthy of credit, and the Court holds that as Plaintiff thus failed to prove that the 1st Defendant failed to pay the stipulated porapaad, the Moonsiff decided properly in dismissing the case. I affirm the original decree and dismiss the appeal with costs against the Appellant.

THE 16TH JANUARY 1857.

Appeal Suits Nos. 518, 568 and 581 of 1856.

Appeal from the decision of Syed Mahadee Allum, Sudr Ameen Moofty of Calicut, dated 23d June 1856.

		No. 518.	No. 566.	No. 581.
Tilloomanatil Malomanady; by Vakeel Venguideshwarayen,	(1st Deft.,)	Applt.	.....	2d Respt.
Kootharavettata Ittapa Nair,	(1st Plff.,)	1st Respt.	1st Respt.	Applt.
Koomaly Neythyar; by Vakeel Narayen Iyen,	(2d do.,)	2d do.	2d do.	.....
Manavikramah Zamorin Rajah of Calicut; by Vakeel Sheshom Putter,	(5th Deft,)	.....	Applt.	1st Respt.

1. The plaint sets forth that the property No. 1 the Plaintiff's devasom was assigned upon kanom of 4,750 fanams to the 1st to 4th Defendant's karnaven in the month of Karkadom 959, the rent after deducting interest being fixed at 7 parras of paddy; this was paid up to 1017, it having now been brought to Plaintiff's knowledge that a portion of this land No. 1 together with portions of certain lands Nos. 2, 3, 4, were obtained on jenm by the 1st Defendant from the Plaintiff's karnaven.

2. The Plaintiff consequently sued to set aside the jenm

deed so obtained and also for the recovery of arrears of porapaad due on No. 1 from the year 1018 amounting to 56 fanams, the same to be deducted from the kanom the balance kanom paid and No. 1 to be restored.

3. The 1st and 2d Defendants in a joint answer stated that the transfer was not as represented in the plaint; that half of the land No. 1 is the jenm of the 5th Defendant from whose karnaven their (Defendants') karnaven obtained the half on kanom; that the remaining half is the jenm of the Plaintiff over which their karnaven had kanom, subsequently otty right, and in the year 1018 the 1st Defendant purchased the jenm right of this half of No. 1 and that of portion of the lands Nos. 2, 3 and 4.

4. The 3d and 4th Defendants exparte.

5. The 5th Defendant supported the 1st and 2d Defendants' answer.

6. The Moofty in his decree remarked that the maroopattom document *A*, was unworthy of trust; that 1st Defendant purchased the jenm right of half the land No. 1 and portions of the lands 2, 3 and 4, were proved by his witnesses and the registered jenm deed No. 15, but the property pertaining to the devasom and stanom could not legally be disposed of on jenm, a point determined by the Sudr Udalut's Special Appeal Nos. 65 and 52; that the other half of the land No. 1 is the jenm property of the 5th Defendant has not been clearly proved, and it is impossible to say whose is the jenm right; consequently this point must be determined by a separate action and until this be done that portion cannot be restored. Therefore the other half of the land No. 1 is to be restored and Plaintiff is to pay to 1st Defendant the jenm price amounting to 20,970 fanams and Coorycoor rupees 111-15-2; all the Defendants were assessed with Plaintiff's costs and the Defendants to bear their own costs. The Plaintiff's demand for porapaad was dismissed.

7. The 1st Defendant appeals under Appeal Suit No. 518 against that portion of the Lower Court's decree setting aside the jenm purchase of half the land No. 1 and portions of the lands Nos. 2, 3 and 4; he urges; 1st, that Plaintiff's karnaven assigned many of the devasom and stanom lands to other parties which point he proved, and the Court admitted the evidence; consequently, to upset the purchase was wrong; 2d, that the Sudr Ameen has not disposed of the costs in the way they ought to have been.

8. Respondent answers.

9. The 5th Defendant appeals under Appeal Suit No. 566.

He urges that as the Plaintiff's demand for restoration of half the land claimed by him was not complied with, it was unjust to assess him with Plaintiff's costs or to assess him with his own.

10. Respondent answers.

11. Plaintiff appeals under Appeal Suit 581. He appeals against those portions of the decree which refuse the restoration of half of the land No. 1 ; that a greater portion of kanom then was due has been decreed and the refusal to grant him porapaad as sued for ; his reasons are ; 1st, that as the jenm purchase has been set aside, it was not proper to award him, Plaintiff, to pay the jenm purchase money ; that a point similar to this was decided in this Court under Appeal Suits Nos. 265 and 324 of 1854 ; that as the lands are devasom property and the 5th Defendant has nothing to do with the devasom, he cannot possibly have any kind of claim over the lands pertaining thereto.

12. The 1st Respondent exparte.

13. The 2d Respondent answers.

JUDGMENT.

14. The Court is of opinion that before deciding the other Appeals Nos. 566 and 581, it will be necessary to remand Appeal Suit No. 518 for reinvestigation and decision de novo on the following grounds.

15. The Lower Court is satisfied that the jenm right was obtained by the 1st Defendant, but has set aside the purchase on the ground that it is opposed to the ruling of the Sudr Udalut in special appeal decree No. 63 of 1852, which says that the stanomkar has no authority to alienate the jenm of the lands pertaining to the stanom of which he is the head.

16. There can be no doubt of the correctness of the principle laid down by the Sudr Udalut, but when a de facto purchase has been made as is said to have been the case here, it becomes necessary before setting it aside to go a step beyond the general principle and to enquire whether or not the jenm right was sold to meet the exigencies of the stanom and by the consent of the parties belonging thereto, because, if so, there can then be no doubt but the stanomkar can in such an exigency sell the jenm property belonging to the stanom. He cannot do so by his own individual act to meet expenses not pertaining de facto to the stanom or to satisfy his own debts, but to satisfy the debts of the stanom, or to meet an exigency he can with the knowledge of the members of the stanom sell the property belonging to it.

17. It appears to me therefore necessary that before finally setting aside the purchase effected by 1st Defendant to call upon him to prove that the jenm right was sold by the stanomkar with the consent of the members to meet the exigencies of the stanom and not to satisfy the individual exigencies of the stanomkar alone.

18. The Plaintiff being called upon to rebut if he can the evidence adduced on this point by Defendant.

19. The Court being then in possession of this information can decide with more satisfaction the point whether the present sale can be upheld or not.

20. It is true that in Appeal Suits 265 and 324 of 1856 this Court followed the principle laid down by the Sudr Udalut in Special Appeal No. 63 of 1852, but on perusal of the extract of the Sudr Udalut's proceedings dated the 4th September 1856 the Court finds that the Sudr Udalut are of opinion that in a case wherein a transfer is made for the benefit of and with the concurence of the family, the act in question cannot be affected by the principle laid down in Special Appeal No. 63 ; hence the Court considers it necessary for the Lower Court to take evidence on this point before it passes a decided opinion the upholding or otherwise of the jenm purchase pleaded by the 1st Defendant.

21. The Court consequently remands the case to the Lower Court with instructions to proceed in the manner pointed out and to decide de novo adjusting the costs in conformity with the conclusion it may come to.

22. The stamp duly paid by Appellant will be refunded to him.

THE 17TH JANUARY 1857.

Appeal Suit No. 544 of 1856.

Appeal from the decision of E. Cullen, Esq., Principal Sudr Ameen of Cochin, dated 5th June 1856.

Parambathakundy Abdoola,....(2d Deft.,) 1st Applt.

Poolikilagatha Markar ; by Vakeel Venguideshwarayen, (3d do.) 2d do.
Pachy Anthony,.....(1st Plff.,) 1st Respt.
Virom Pillah Cherramully,....(2d do.) 2d do.

1. The case as set forth in the decree appealed from was as follows ;

The Defendants under an erroneous impression that a piece of wreck, which was discovered in the sea near the entrance of the Cochin river belonged to the late ship "Orpheus," which had been purchased by them when sold as a wreck by auction, employed the Plaintiffs to bring the said piece of wreck on shore and gave them a written agreement that they would remunerate them for their trouble by giving them one fourth of what might be saved of the said piece of wreck.

The piece of wreck in auction proved not to belong to the ship "Orpheus," but to another vessel the "Good Hope." Hence the Defendants refused to conform with the provisions of the contract *A* and Plaintiff sued for the recovery of the amount promised.

2. The Lower Court was of opinion that the Defendants are bound by their engagment to pay the Plaintiffs one fourth of the sum realised by the sale of the piece of wreck which they (Plaintiffs) brought on shore because "the Plaintiffs performed their part of the contract and they are entitled to the promised remuneration."

3. "The mistake made by the Defendant in supposing that the piece of wreck was their property in no way affects the claim of the Plaintiffs."

4. The Court consequently decreed that the sum of rupees 118-14-9 shall be recovered together with further interest jointly or separately from the 1st, 2d, 3d and 4th Defendants.

5. The Defendants appeal urging that the agreement *A* was

granted upon the Plaintiffs representing to them that the portion of the wreck belonged to the ship "Orpheus," and as it turned out to be the property of another, they are not called upon to perform their part of the contract *A*.

JUDGMENT.

6. In Original Suit No. 96 of 1854, these Defendants pleaded that the portion of the wreck herein alluded to did belong to the late ship "Orpheus"; hence the Court can give no weight to the objection urged in appeal. It was the duty of the Appellants to ascertain the fact for themselves before granting the contract.

7. The Plaintiffs' duty under *A* was to bring the portion of the wreck on shore and this they performed: hence in equity the Defendants are bound to remunerate them at the rate laid down in the contract *A*.

8. Concurring entirely with the view of the case taken by the Principal Sudr Ameen, I affirm the original decree and dismiss this appeal with costs against the Appellants.

THE 19TH JANUARY 1857.

Appeal Suit No. 550 of 1856.

Appeal from the decision of E. Cullen, Esq., Principal Sudr Ameen of Cochin, dated 12th June 1856.

Parambatha Kandy Coonhamod, (1st Defendant,) 1st Appellant.
Saidy, Vitil Moideen Cootty;
by Vakeel Venguideshwarayen,(2d Defendant,) 2d Appellant.

Mr. F. T. Lloyd; by Vakeel
Ramen Menon,..... (Plaintiff,) Respondent.

1. This is an appeal from the decree of Principal Sudr Ameen of Cochin awarding the sum of rupees 1,358-8-0, being the balance of principal and rupees 32-9-8 being interest on that sum from the 1st September 1855 to the date of plaint, total rupees 1,391-1-8, to be paid to Plaintiff jointly or separately by Defendants; also costs to be borne by Defendants jointly or separately.

2. It appears the Defendant got an advance from the Plaintiff of rupees 1,500 in October 1854 to supply fish oil; that they failed to do so and returned of the advance only rupees 300.

3. In bar of plaint demand they urged that as the persons to whom they have made advances of the Plaintiff's money for

fish oil, failed to supply the fresh oil due on the said advances they, Defendants, cannot pay the Plaintiff.

4. This plea the Lower Court would not admit observing "the Defendants are bound to pay Plaintiff, and they may, if they think proper, adopt measures to recover the money due to them by the persons to whom they made advances."

5. The Defendants urge in appeal ;

1st. That the decree should have been passed against the parties to whom they made advances ;

2d. That interest should not have been adjudged on the balance principal.

6 Respondent answers.

JUDGMENT.

7. The Lower Court's award is strictly just. The Defendants contracted to deliver a certain quantity of fish oil and received an advance from the Plaintiff of rupees 1,500. They failed to fulfil the contract voluntarily entered upon by them and of course the Plaintiff is to look to Defendants alone for the loss incurred by him by their default.

8. The Plaintiff has no cause of action against the parties to whom the Defendants made advances, the Defendants only must look to them for any reimbursement of any advance, but they, as the contracting parties, are answerable to the Plaintiff.

9. The Court also is of opinion that the Lower Court decided right in awarding interest.

10. I affirm the original decree and dismiss this appeal with costs against the Appellants.

THE 21ST JANUARY 1857.

Appeal Suit No. 546 of 1856.

Appeal from the decision of Mr. W. Stuart, District Moonsiff of Ernaad, dated 22d August 1856.

Vallava Valia Rajah of Walloowanad ; by Vakeel Tamoo Menon,	(Plaintiff,)	Appellant
Madangoly Koonhoony Paniker	(1st Deft.,)	1st Respt.
Valia Tambooratty	(2d do.)	2d do.
Oodembrakat Koonhoony Nair	(3d do.)	3d do.
Rama Paniker	(4th do.)	4th do.
Kopany Paniker	(5th do.)	5th do.
Chatoopoony Paniker	(6th do.)	6th do.
Govinda Paniker	(7th do.)	7th do.
Coonhoo Paniker	(8th do.)	8th do.
Kootoo Paniker	(9th do.)	9th do.
Echoo Paniker	(10th do.)	10th do.
Changoo Paniker	(11th do.)	11th do.
Kristna Paniker	(12th do.)	12th do.
Coonhy (female)	(13th do.)	13th do.
Cheroony (do.)	(14th do.)	14th do.
Cherotty (do.)	(15th do.)	15th do.
Coonhy (do.)	(16th do.)	16th do.
Ooniada (do.)	(17th do.)	17th do.
Paroo (do.)	(18th do.)	18th do.
Ittacherry (do.)	(19th do.)	19th do.
Cherotty (do.)	(20th do.)	20th do.
Letchmy (do.)	(21st do.)	21st do.
Oonicherra (do.)	(22d do.)	22d do.
Narayana (do.)	(23d do.)	23d do.
Poolikagatha Oony Ramen Nair	(24th do.)	24th do.
Taloor Mahmod	(25th do.)	25th do.

1. The original suit was instituted for the recovery of fanams 48, being the arrears of patom for two years due on a land, the alleged jenm property of the Plaintiff and said to have been assigned on verom patom to the 1st Defendant on the 31st Edavom 1018 on a yearly rent of 24 parras of paddy after deducting the niguidy, which was paid by the patomcar and for restoration of the said land.

2. The 1st Defendant denied the plaint in toto, pleading that the land was obtained by his tarwaad from the 2d Defendant

the jenmee thereof on perpetual tenure in recompense for services performed.

3. The 2d Defendant was exparte.

4. The 3d Defendant holds the land from the 1st Defendant.

5. The 4th Defendant supported the 1st Defendant's answer adding that if any patom chit had been executed by 1st Defendant to the Plaintiff, it must have been collusively obtained and that it was not to be relied upon. He also pleaded that the land was obtained on perpetual tenure from the 2d Defendant's stanom for money paid.

6. The other Defendants were exparte.

7. The Plaintiff filed the patom chit dated 1018 marked *A*, and another document *B* a patom chit of prior date.

8. The Moonsiff dismissed the suit remarking that it appeared that the land sued for had been in the possession of the 1st and 4th to 23d Defendants' tarwaad since 981, a fact admitted by the Plaintiff himself, and Plaintiff failed to shew on what tenure the land was so held by the Defendants' tarwaad; that prior to 1018 the Plaintiff can shew no documents; that it is not usual for the party holding lands on simple lease to pay the niguidy; hence he concluded that there was reason for supposing that the patom chit *A* although deposed to by the witnesses had been obtained from the 1st Defendant in collusion with the Plaintiff.

9. The Plaintiff appeals urging;

1st. That the patom chit *A* having been proved it was wrong to dismiss the suit;

2d. That there were no grounds for supposing collusion;

3d. That it is not unusual for those holding lands on simple lease to pay the niguidy.

JUDGMENT.

10. From the circumstances set forth by the Moonsiff in his decree I quite concur with him in thinking that the patom chit dated 1018 is not to be relied upon; the fact that prior to that date no documents have been filed to shew that the land was held by the Defendant on verom patom; must necessarily militate much against the authenticity of *A*.

11. The long and admitted occupation of the property by the Defendants also tends to throw discredit on the document *A*.

12. Such being my view of the case, I consider the Moonsiff decided correctly in giving no weight to the Exhibit *A*. I consequently affirm the original decree and dismiss the appeal suit with costs against the Appellant.

THE 21ST JANUARY 1857.

Appeal Suit No. 565 of 1856

Appeal from the decision of Syed Mahadee Allum, late Sudr Ameen Moofty of Calicut, dated 30th July 1856.

Poodiacherrakel Moideen Cootty; by Vakeel Ramen Menon.....	(2d Defendant,)	Appellant.
Poodiacherrakel Coyahassen Cootty,	(1st Plaintiff,)	1st Respt.
His brother Moideen Cootty.....	(2d do.)	2d do.
Pooker Ally.....	(3d do.)	3d do.
Oony Cootian.....	(4th do.)	4th do.
Coonhally Coyah.....	(5th do.)	5th do.

1. The original suit was instituted for the recovery of arrears of patom due on certain lands the jenm of the Plaintiff and 4th Defendant, assigned on verom patom through the 1st Defendant to the 2d Defendant in the month of Medom 1024 on a yearly pattom of 500 parras and for restoration. The patom was not paid and Plaintiff sued for the arrears due from 1025 up to 1031, in all rupees 1,137-8-0 and restoration of the lands.

2. The 1st Defendant admitted that he obtained the lands on verom patom for the 2d Defendant from the Plaintiffs; that 2d Defendant was answerable for the rent sued for.

3. The 2d Defendant was exparte.

4. The 3d Defendant in his answer urged that certain lands over which he holds a kanom lien were included in the plaint lands and prayed that these might be excluded from the lands sued for.

5. The 4th Defendant admitted the plaint.

6. The Plaintiff filed the patom chit.

7. The Moofty Sudr Ameen finding the patom chit duly proved awarded the arrears sued for to be paid by the 2d and 3d Defendants and the restoration of the lands to Plaintiff assessing the 2d and 3d Defendants with costs.

8. The 2d Defendant appeals. He urges that he never saw the notice; that the adhikary in collusion with the Plaintiff made a false return; that the Sudr Ameen took no notice of his (Appellant's) offer to take oath.

9. The 1st, 2d and 4th Respondents answer. They urge that the assertion in appeal that Appellant never saw the notice is false; that they are prepared to hear the 2d Defendant's oath, providing he deposits the amount sued for.

JUDGMENT.

10. Although in general the Court is slow to admit assertions to the effect that the notice was not served, yet in this case it appears to the Court that the ends of justice will be more fully attained if the suit is remanded to the Lower Court for re-investigation and decision de novo.

11. It appears from the record that the Plaintiff and 2d Defendant are brothers and both have equal right over the property sued for.

12. The cause of the property being assigned on patom was, it is said, to liquidate certain debts left by Plaintiff and 2d Defendant's father and the 2d Defendant voluntarily took in rent the property on the terms set forth.

13. In the absence of the 2d Defendant's answer the Court cannot say whether this statement is correct, but considering the position of the parties towards each other and their joint right to the property the Court is of opinion that if an opportunity is afforded to the 2d Defendant to answer, the rights of the case will be better known.

14. Besides the Court somewhat doubts the correctness of the return made which says that the 2d Defendant was sick of fever and refused to sign the notice.

15. The Court consequently remands the suit with direction to replace it on the file to take the 2d Defendant's answer and proofs and decide de novo, adjusting the costs in conformity with the conclusion the Court may come to. The stamp duty in appeal will be returned to Appellant.

THE 23D JANUARY 1857.

Appeal Suit No. 570 of 1856.

Appeal from the decision of W. Holloway, Esq., Acting Subordinate Judge of Calicut, dated 8th August 1856.

Shiravama Putter's son Soobramamyen Putter, (1st Plff.,) Appt.
His younger brother Shamoo Putter,.....(2d do.) 2d do.

Shikary Vurmah Valia Rajah of Palghautsherry, } (1st Deft.,) 1st Respt.
T. Clarke, Esq., Collector of Malabar,.....(4th do.) 4th do.
Ananda Putter's son Soobramanyen Putter, (3d do.) 3d do.

1. The original suit was instituted for the possession of one parcel of land alleged to have been granted to Plaintiff on kanom by the Shikary Vurmah Valia Rajah, 1st Defendant, whose jenm property the land sued for is said to be.

2. The 1st Defendant did not answer.

3. The 3d Defendant answered that he is in possession under a pattyom granted by Government to whom the land had lapsed on the death of Chenatha Nair whose jenm it was.

4. The 4th Defendant, Collector of Malabar, answered that the 1st Defendant had not and never had a jenm right to this parcel of land; that the jenm was that of Chenatha Nair, on whose decease without heirs it had escheated.

5. The Acting Subordinate Judge dismissed the suit being of opinion "that no case whatever has been made out by the Plaintiffs." He also deemed it clearly established that 3d Defendant alone has really possessed the land in the only sense in which possession can be used, and nothing having been adduced which in his judgment shewed that the right of possession is in the Plaintiff or his alleged assignee, the suit was dismissed with costs against the Plaintiffs.

6. The Plaintiff appeals, urging,

1st. That it is proved by the document *A* that the property is the jenm of the 1st Defendant and held on mortgage by him (Appellant);

2d. That the Exhibit *B* and the witnesses 1 and 3 prove the possession of the land by Plaintiff and that it was improved prior to the transfer of it by Government to 3d Defendant;

3d. That there is a document in the Huzzoor to prove that the land is not the jenm of Chenatha Nair; that application was made for copy of this document to the Collector who did not give it, and subsequent application was made to the Subordinate Court to send for the document and inspect it or to instruct the Collector to furnish Appellant with a copy which was not done.

JUDGMENT.

7. I have gone over the original decree with care and am clearly of opinion that there is not a scintilla of evidence on record to lead to the supposition that the land sued for is the jenm property of the 1st Defendant. Unless this had been done the Plaintiff cannot possibly obtain restoration of the land shewn to be in possession of the 3d Defendant by cowle granted by the Collector when it was jungle.

8. The Plaintiff's document *A* goes no way to prove that the jenm right is vested in the 1st Defendant and *B* is equally worthless.

9. The Subordinate Judge for reasons assigned discredited the evidence of the Plaintiff's witnesses and these reasons appear to the Court legitimate and sound.

10. I consider it highly improbable that the land would have been allowed to remain waste for so long a period, had it been de facto assigned to the Plaintiff by the 1st Defendant. It does not appear from the record that any application was made to the Court for the document alluded to in the 3d objection.

11. Conceiving that the original decree is a just one, I affirm it and dismiss this appeal with costs against the Appellant.

THE 23D JANUARY 1857.

Appeal Suits Nos. 254 and 311 of 1856.

Appeal from the decision of Elapully Gramon Chinayen, District Moonsiff of Patamby, dated 31*st March* 1856.

	A. S. No. 254 of 1856.	A. S. No. 311 of 1856.
Kally Poolakel *alias* Koonatodigail Toopalatha Ramen Nair,	(1st Deft.) Appt. Respondent.	
Kally Poolakel *alias* Koonatody Kristna Nair,	(Plaintiff,) Respt. Appellant.	

1. The original suit was instituted for the recovery of two years' patom rupees 371-10-11 and restoration of lands the jenm property of the 4th Defendant and held upon kanom by the Plaintiff's karnaven and assigned by his order to 1st Defendant rof cultivation.

2. The plaint further set forth that in 1027 the Plaintiff's karnavan died and subsequently the 1st, 2d and 3d Defendants acting collusively, they made away with the kanom deed which however the Plaintiff re-obtained but not the lands which remain in the 1st Defendant's possession.

3. The 1st Defendant answered stating that his claims over the property are co-equal with the Plaintiff; that he, 1st Defendant, is the karnaven whose province it is to deal with the property; further, that when the deceased karnaven was alive he obtained from him, 1st Defendant, the amount of his kanom granting ennuck to the 4th Defendant's address on whose acceptance of the same the kanom deed was renewed with him, 1st Defendant; that the deceased karnaven's kanom deed was deposited with the 2d Defendant from whom by cajolery the Plaintiff got possession of it.

4. The 2d Defendant in his answer stated that the kanom deed was deposited with him, but the 1st Defendant took it back and made it over to Plaintiff.

5. The 3d and 4th Defendants supported the 1st Defendant's answer, the 4th adding that when the kanom deed was renewed he obtained a moory from the 1st Defendant promising to return the old kanom deed.

6. The Moonsiff awarded restoration of the property dismissing the patom sued for, and the amount of niguidy paid by Plaintiff was also awarded.

7. The grounds upon which Moonsiff came to the conclusion were ;

i. That if 1st Defendant was the heir of the deceased karnaven there was no occasion for him to give money to the Plaintiff's karnaven ;

ii. That when the 4th Defendant renewed the deed with 1st Defendant he ought to have obtained back the old deeds ; that No. 1 filed by 4th Defendant is a suspicious document; that by the exhibit *N* it is shewn that the Plaintiff managed the affairs and the document is corroborated by the niguidy chits.

8. Appeal Suit No. 254.—The 1st Defendant appeals, urging,

1st. That on a renewal of the kanom deed the old deeds were rendered null and void ;

2d. That the Plaintiff by insinuating himself with the revenue kariasten got possession of the niguidy chits ;

3d. That he, 1st Defendant, was not included in the decree, copy of which is filed, Exhibit *N* ;

4th. That he being the karnaven there is no cause for him to give up property in his possession.

9. Appeal Suit No. 311.—Plaintiff appeals against that part of the decree disallowing patom. He urges ;

1st. That although there is no evidence to prove the amount of patom the Defendant being the occupant of the land is bound to pay interest on the kanom and micharom.

JUDGMENT.

10. The Court is of opinion that the objections urged in appeal do not shew that the original decree was based on insufficient grounds.

11. The first objection is that by the renewal of the kanom the old kanom deed became null, but this is not the point. The Moonsiff argues and very properly too that if the alleged renewal of the kanom deed with the 4th Defendant took place it behoved him, 4th Defendant, to have obtained back the former kanom deed and the necessity of this the 4th Defendant in his answer admits, saying, that he obtained a moori from the 1st Defendant in lieu of the old deed.

12. It was 1st Defendant's own fault if he was not included in the suit he alludes to in the 3d objection. The objection therefore does not vitiate in any way the importance of that exhibit.

13. As stated in the 4th objection the 1st Defendant may be the karnaven, but he has not proved that the affairs of the Plaintiff's deceased karnaven were conducted by him. Considering the original decree a just one I affirm it and dismiss Appeal Suit No. 254 with costs against Appellant.

14. There was no evidence adduced to prove the amount of patom and I see no reason to interfere with that part of the decree disallowing the amount sued for. I therefore affirm the original decree also on this point and dismiss Appeal Suit No. 371 with costs againts Appellant.

THE 26TH JANUARY 1857.

Appeal Suit No. 502 of 1856.

Appeal from the decision of Syed Mahadee Allum, Sudr Ameen Moofty of Calicut, dated 26th May 1856.

Valiapidakel Camooty..... (2d Deft.,) 1st Appt.
Kallykahtil Oony Hydooroo..... (5th do.) 2d do.
Chetty Aiamel Katally; Vakeel Ramen Menon, (6th do.) 3d do.

Valiapidigakel Oony Moideen; by Vakeel Kamoo Moollah, } (Plaintiff,) Respt.

1. The original suit was instituted for the recovery of rupees 299-4-0, value of 3 kanom deeds of certain lands over which the Plaintiff held a kanom lien and which were given to the 1st to 3d Defendants at their request for the purpose of realizing the kanom amount from the jenmee, but having failed to do so, the Plaintiff sued for the recovery of the above amount.

2. The 1st Defendant in his answer pleaded that the amount was received by the Defendants 2d to 6th, consequently he is not responsible for the amount.

3. The 2d, 5th and 6th Defendants pleaded that they received no documents from the Plaintiff.

4. The Moofty decreed the amount sued for with costs against the Defendants, being of opinion that the Plaintiff's claim had been proved.

5. The 2d, 5th and 6th Defendants appeal urging, that if they had received the documents from the Plaintiff, the Plaintiff would certainly have obtained from them a document to that effect.

6. The Plaintiff's Vakeel consented to the Plaintiff's claim being dismissed with costs if the Defendants' 2d and 5th and 6th would take oath in the matter.

7. Order was issued to the Nazir to swear the said Defendants and a return has been received from the Nazir that the Defendants have duly taken the oath.

JUDGMENT.

8. In conformity with the return so received, it only remains for the Court to reverse the original decree and to dismiss the Plaintiff's claim with all costs both of original and appeal suits.

THE 26TH JANUARY 1857.

Appeal Suit No. 580 of 1856.

Appeal from the decision of W. Holloway, Esq., Acting Subordinate Judge of Calicut, dated 4th July 1856.

Captain T. H. Godfrey; by Vakeel Venguideshwarayen, } (Defendant,) Appellant.

Mr. F. Jones, (Plaintiff,) Respondent.

1. The original suit was instituted for the recovery of rupees 5,173-7-0, damages alleged to have been sustained by Plaintiff through Defendant's breach of contract in not delivering 60 tons of coffee, which the Defendant is said to have sold to Plaintiff on 15th September 1853.

2. The Defendant in his answer denied that he contracted with Plaintiff to sell the coffee in the manner and form as set forth by Plaintiff.

3. The Acting Subordinate Judge in a very able and elaborate decree was of opinion that on the 17th December 1855 there existed a valid contract for the purchase and sale of the whole of the Defendant's crop, and that the contract was broken by the act of Defendant on the 19th January 1856.

He was also of opinion, with reference to a point pleaded by Defendant "to the effect that the advance of a certain sum of money by Plaintiff was a condition precedent to Defendant's obligation to deliver, and that non-payment of the sum released Defendant from all liability;" that the contract was completed on the 27th September when in accepting Plaintiff's offer Defendant assented to the terms of payment proposed, viz. the payment of from 5,000 to 6,000 before the coffee leaves Calicut and payment of the net balance by a bill after shipment. "However," the Defendant in a letter stated, "if I am short of cash you can perhaps oblige me by advancing or paying for the first arrivals of coffee." "It is clear therefore," says the Subordinate Judge, "that under this contract the Defendant possessed merely a right to the payment of this sum before the shipment of the coffee, and it is equally clear that Plaintiff never broke this condition, for coffee was never delivered to him."

4. Disallowing the Plaintiff's claim for damage sustained on 500 boxes and commission the Acting Subordinate Judge awarded that "Defendant will pay to Plaintiff rupees 3,147-7-0 with costs proportionate to that amount, the Plaintiff paying costs upon the sums disallowed; the evidence of the Plaintiff's witnesses "clearly shewing that Plaintiff was entitled to at least the sum claimed by him on account of loss sustained by the wrongful act of Defendant who in fact did not dispute the amount, but took issue upon the fact of the contract."

5. The Defendant appeals urging;

1st. That no actual agreement took place between Plaintiff and Defendant according to the usage in force among merchants; hence he was not liable for any loss;

2d. That letters passing between parties are merely preliminary and cannot be viewed as a contract completed;

3d. That exhibit *O* shews that exhibit *B* was not a regular karar or agreement;

4th. That no particular time was specified for the delivery of the coffee; hence Plaintiff had no right to sell it to another;

5th. That before the delivery of coffee, the Plaintiff should have paid money; that having failed to do so, the Defendant cannot be held answerable.

6. The Court has also heard other observations from Plaintiff's Vakeel the sum of which amounts to the plea that there was no regular agreement; that Defendant wished to have one drawn

which Plaintiff refused, and that coffee was offered up to 18th January.

JUDGMENT.

7. The Court has gone over the decree of the Lower Court with much attention and has also well considered the objection urged in appeal. It is evident that the only point for the Court to adjudicate upon is "was there a contract existing between Plaintiff and Defendant for the sale and purchase of coffee; and was the contract understood on both sides. It matters not whether the contract was formally drawn out or not; the law does not require that such should be necessary," for any printed papers or communication in writing which may have passed between the parties, forming on the face of them part of *one connected transaction*, may be incorporated and construed together, and made to establish the requisite written evidence of an "agreement," but the agreement or the consideration for the promise must appear upon the face of the written instruments themselves, when placed in juxtaposition. Now, applying this principle to the exhibits filed on both sides, the Court will be able to shew from them the position in which the parties stood towards each other, and if it finds that these constitute an agreement to sell and purchase the coffee, then the Defendant by selling it to another will in equity be liable to Plaintiff for the loss incurred by him.

8. Exhibit *A* is a letter written by Defendant to Plaintiff dated the 19th May 1855 in which he states, "I think there cannot be less than 40 tons which I hope to have the pleasure of *sending to you !!*"

9. In another letter *B* dated the 15th September 1855 exhibit *B* he demands 21 rupees a cwt. at Calicut for good, and 17 rupees a cwt. for triage.

10. Plaintiff in answer in a letter *I* dated the 20th September 1855 accepted the offer and consented to pay for the coffee at the above rate, but wished that it should be prepared in a particular manner. He further promised to pay 5 or 6,000 rupees before the coffee shall be shipped from Calicut.

11. In a letter *C* dated the 27th September Defendant differed in the mode of preparing the coffee and as regards payment observed "if you could pay half by the time the coffee left Calicut I should be glad."

12. In a letter dated 4th October 1855 (*H*) Plaintiff makes certain proposals as to the preparation of the coffee stating as regards the payment "respecting, the money I shall be able to pay you before it (coffee) leaves more than I have said."

13. With regard to the only point not yet settled between the corresponding parties, viz. the mode of preparation, the Plaintiff states in a letter dated 16th October 1855 (III) "if this is not satisfactory then let it be understood that I take it at the prices you have offered and in the state ready for shipment."

14. The Defendant writing on the 9th December 1855 (I) says, " The coffee will amount this crop to 60 tons, if you do not wish for more than the quantity I estimated it, please let me know." Plaintiff in reply (VII) 17th December 1855 says, "*I of course take the whole.*"

15. Now it is as clear as the sun at noonday that both parties understood that there was a contract binding on both sides, and the letter written on the 9th December clearly proves that Defendant considered himself *bound* to sell to Plaintiff the quantity estimated, for he asks him "if you do not wish more than the quantity I estimated at, please let me know, to which" the answer is "I of course take the whole," it is plain therefore that the agreement appears on the face of these exhibits and it was as binding upon the Defendant as any formal contract could possibly be. It is idle for Defendant to set up the plea that he sold the coffee to another because Plaintiff would not grant a karar ; the karar between the two was complete on the 20th September 1855.

16. It is quite unnecessary for the Court to go further into the other correspondence for it is not material to the point at issue relating only to certain advances asked for as a *favor* and not as a *right* and to boxes for packing up the coffee.

It has no reference whatever to the contract existing between the two as to the sale and purchase.

17. Such being the position of the parties therefore the Court distinctly holds that Defendant deliberately broke the contract when he wrote the Exhibit *O* on the 19th July 1856, intimating that he had sold the coffee to another, because Plaintiff "used threats." To assert that he did so because the Plaintiff would not send advances of money is absurd because he agreed to Plaintiff's terms that the coffee was only to be paid for on delivery at Calicut, which act the Defendant failed to perform.

18. The Court entirely concurs with the view of the case taken by the Sub Judge and accordingly affirms the decree appealed from and dismisses this appeal with costs against Appellant.

THE 28TH JANUARY 1857.

Appeal Suit No. 262 of 1856.

Appeal from the decision of Ookanden Oony Nair, District Moonsiff of Betutnaad, dated 27th March 1856.

Nallagatha Coonhy Amoo,.....	(Plaintiff,)		Appellant.
Kallingalagatha Packy Cootty.....	(2d Deft.,	) 1st	Respt.
Cadya Cootty,.....	(3d ditto	) 2d	ditto.
Cherachum Vittil Madary,.....	(4th ditto	) 3d	ditto.
Valiagatha Poodia Maliakil Paroochy Oomah,	(5th ditto	) 4th	ditto.
Kottathare Kamoo,.....	(6th ditto	) 5th	ditto.

1. The orginal suit was instituted for cancelment of the sale of a land attached and sold in satisfaction of the decree passed in original Suit No. 204 of 1850 in favor of the 5th Defendant against the 1st to 4th Defendants.

2. The plaint sets forth that the land over which the 1st to 4th Defendants hold a kanom lien was pledged to Plaintiff by the 2d Defendant with the consent of the 1st, 3d and 4th Defendants in the month of Kany 1027.

That when in Plaintiff's occupancy on the above lien the land was attached and sold without his knowledge and purchased by the 6th Defendant.

3. The 1st to 4th Defendants were exparte.

4. The 5th Defendant in answer denied that Plaintiff held a mortgage over the land sued for, he being merely an occupant thereof on veerompatom lease; that the mortgage deed has been collusively got up by Defendants 1 to 4; that the assertion that the land was attached without Plaintiff being aware of the fact, is untrue.

5. The 6th Defendant supported the 5th Defendant's answer

6. The Moonsiff dismissed the suit considering that Plaintiff had failed to adduce any evidence to prove that the land sued for had been assigned to 2d Defendant as his share by his tarwaad, and considering that the land is not far from the Moonsiff's Court, he was of opinion that the Plaintiff's assertion of ignorance as to the attachment was not really of any credit.

7. The Plaintiff appeals urging ;

i. That the evidence proved that the land had been assigned to 2d Defendant as his share ; that if this proof is insufficient he, Appellant, is prepared to give more ; that the documents to prove this allegation must be in the 2d Defendant's possession ;

ii. That proclamation was not put up at the spot ; that in his absence on mercantile business the attachment was effected.

JUDGMENT.

8. The 1st Defendant is the karnaven of the tarwaad to which the property sued for belonged, and considering that there is not a tittle of evidence on record to prove that the land had been assigned to 2d Defendant, the alleged mortgagee to the Plaintiff, the Court is of opinion that the Plaintiff's case is a most suspicious one. The panyom deed filed is evidently a conclusive document and altogether unworthy of trust.

9. Looking at the fact stated by the Moonsiff of the proximity of the land to the Moonsiff's Court, the Court holds that the plea of ignorance is equally undeserving of credit.

10. There appearing no grounds for sustaining this appeal, the Court rejects it and affirms the original decree with costs against the Appellant.

THE 28TH JANUARY 1857.

Appeal Suits Nos. 98 and 106 of 1853.

Appeal from the decision of Vydenatha Shastry, late Pundit Sudr Ameen of Calicut, dated 22d November 1852.

		A. S. No. 98.	A. S. No. 106.
Tilloomanatil Tilloomanady,	(3d Deft.,)	1st Appt.	.....
Maloo Manady,.....	(5th do.)	2d do.	.....
Koodaravetatha Ittapen Nair,	(1st Plff.,)	1st Respt.	1st Respt.
Rachydava Amah Koomaty Nethyar; by Vakeel Amboo Podwal,	(2d do.)	2d do.	2d do.
Manavickramah Zamorin Rajah of Calicut; by Vakeel Venguidesharayen,	(4th Deft,)	.....	Appellant.

1. The original suit was for restoration of certain landed porperty appertaining to 1st Plaintiff's Nalapada Nair's stanom and alleged to have been mortgaged in *Koombhom* 981 by his predecessor to 1st and 2d Defendants' karnaven for 400 fanams on a yearly porapaad of 50 parras of paddy on payment of fanams 150, being the balance kanom after deducting the arrears of porapaad due from 1016.

2. 1st and 2d Defendants admitted the plaint urging that in the year 1016 they received the amount of their claim from the father of the 3d and 5th Defendants and passed their right to him.

3. 3d Defendant denied the plaint asserting that only a moiety of the property was Nalapada Nair's, the remainder being the 4th Defendant's; that both these from times had been held by 1st and 2d Defendants' ancestors, the former on a superior mortgage; that on a division of their property, 1st and 2d Defendants transferred their right on these and other lands to 3d Defendant's father on receipt of their claim from him; that subsequently in 1001, the Nair renewed the right for 1,750 fanams allowing the property to be enjoyed in perpetuity; that a renewal of the right in the 4th Defendant's moiety was also obtained from his predecessor, and that in 1011 as the deed of 1001 had mutilated, the late Nair received it back and executed a fresh deed under which

he (3d Defendant) pleaded that he and 5th Defendant held possession of the lands and which were not reclaimable.

4. 4th Defendant asserted his right on half of the plaint lands and pleaded that the mortgage thereon was renewed to 3d Defendant's father in 1001 for fanams 95.

5. 5th Defendant's answer was to the same effect as that of 3d Defendant.

6. The Sudr Ameen adjudged restoration of the plaint property on payment to 1st and 2d Defendants of the mortgage sum less the micharom and assessed 1st to 5th Defendants with Plaintiff's costs in addition to their own.

7. 3d and 5th Defendants appealed under No. 98 for reversal and 4th Defendant under No. 106 for modification of the original decree.

8. The late Acting Civil Judge was of opinion that 4th Defendant's right to a moiety was established and that the mortgage on the remainder amounted to fanams 600 He however disallowed the plea of right to perpetual enjoyment and accordingly adjudged restoration of a moiety of the plaint property to Plaintiffs on payments to 3d and 5th Defendants of the difference of fanams 600 and proportionate micharom from 1016 and assessed Plaintiffs with a moiety of their own besides the whole of 4th Defendant's costs original and appeal. The remaining Defendants were to bear their own costs, 3d and 5th Defendants in addition also the other moiety of Plaintiffs.

9. Against this decision 1st Plaintiff and 5th Defendant preferred two special appeals under Nos. 88 and 87 of 1856 and the Court of Sudr Udalut have remanded the suit for decision de novo on the following grounds; First. "The Acting Civil Judge admits the improbability of 3d and 5th Defendants' assertion of a larger right, whilst they admit the right held by the parties from whom they originally obtained the property to have been only fanams 400. Consequently the Acting Civil Judge ought to have shewn better reasons for increasing the lien, than that of Plaintiff's omission to prove that it was less, the onus probandi resting on 3d and 5th Defendants; secondly, if 3d and 5th Defendants can prove that the deed for fanams 7,750 was passed for the benefit and with the concurrence of the family under which they have held the property for many years without paying porapaad or rent, the Acting Civil Judge erred in considering that this deed would, under the decree in Special Appeal Suit No. 63 of 1852, be shut out from recognition;" they have further required the sum of rupees 45-10-0 (21-3-0 in 87 and 22 9-0 in

88) being portions of costs incurred in the aforesaid special appeal suits to be included in the costs chargeable to the parties in the revised decree.

JUDGMENT.

10. As regards the first objection taken by the Sudr Udalut, the Court has to remark that 3d Defendant never admitted that the right held by 1st and 2d Defendant's father was only fanams 400 having on the contrary pleaded that a superior right was held on a moiety of the plaint property, the 1st objection being based upon the supposed admission on the part of 3d Defendant necessarily falls to the ground. The Document No. 7 filed by these Defendants clearly shewed that their lien on the property was only 695 fanams and this document is dated 1007, while on the other hand the document upon which they claimed the enhanced lien of 1,750 fanams, is dated 1001 ; hence the late Acting Civil Judge considered these lien amounted to no more than 695, an opinion which the Court holds to be correct on the evidence before it.

11. With regard to the 2d objection it is sufficient to observe that the 3d and 5th Defendants failed to establish satisfactorily the allegation that they obtained the property on perpetuity in the year 1001 for fanams 1,750 ; therefore the plea of a perpetual tenure cannot be upheld.

12. The Court concurring in the opinion taken by the late Acting Civil Judge adjudges " in modification of the decree appealed from the restoration of a moiety of the plaint property to Plaintiff on payment to 3d and 5th Defendants of the difference of fanams 600 and proportionate micharom from 1016 and assessing Plaintiffs with a moiety of their own besides the whole of the 4th Defendant's costs, original and appeal. The remaining Defendants bearing their costs ; 3d and 5th in addition also the other moiety of Plaintiff's."

THE 28TH JANUARY 1857.

Appeal Suit No. 159 of 1853.

Appeal from the decision of Syed Mahadee Alum, Sudr Ameen Moofty of Calicut, dated 23d January 1853.

Poodiavitil Bapoo,.....	(1st Plff.,)	1st Applt.
His brother Cootty Ramen,.....	(2d do.)	2d do.
His son Ramen,.....	(3d do.)	3d do.
Poodiavitil Choyee,.....	(1st Deft.,)	1st Respt.
His brother Peravan,.....	(2d do.)	2d do.
Parakat *alias* Podiavitil Cheria Choyi,.....	(3d do.)	3d do.
Canaren,.....	(4th do)	4th do.
Kelloo,.....	(5th do.)	5th do.
Thiroomal,.....	(6th do.)	6th do.

1. The original suit was brought for restoration of a paramba with the house and well situated thereon and for recovery of fanams 201 vishoms 6, being the balance rent due for 12 years.

2. The plaint set forth that the jenm of the paramba was obtained by Oonichaman, father of 1st and 2d Plaintiffs in his mother's, Oonyacha's, name; that on their death, Plaintiffs' mother, Coonhy Pena, mortgaged the paramba to 1st and 2d Defendants' mother and subsequently sued for restoration under Original Suit No. 220 of 1845 (Appeal Suit No. 9 of 1848) but in the appeal decree it was held that she was not entitled to sue for her husband's property when she had sons living and the suit was dismissed; that Plaintiffs as legal heirs brought suit (No. 8 of 1849) for restoration of the mortgaged property, which having been dismissed as opposed to the decree in Appeal Suit No. 9 of 1848, they laid this original suit for restoration of the paramba with rent for 12 years less the revenue paid by the Defendants.

3. 1st Defendant stated that the paramba having been acquired by Oonyacha, himself and 1st Plaintiff and 2d Defendant were equally entitled to it; that 1st Plaintiff had no right to sue for restoration; that 2d and 3d Plaintiffs are not bonâ fide heirs; that 1st Plaintiff had in his possession a larger portion of Oonyacha's property; that the house was erected by him (1st Defendant) and that the value assigned thereto and to the well was inadequate.

4. 2d Defendant whose answer was to the same effect as

that of the 1st Defendant further pleaded that under Appeal Decree No. 9 1st Plaintiff was only entitled to sue for his share and that there was no reason for the institution of a suit like the present one.

5. Third Defendant did not answer.

6. Fourth and 5th Defendants asserted that 1st Plaintiff having been adopted in another family, had no right to the plaint property.

7. The Sudr Ameen dismissed the suit with costs.

8. Dissatisfied with this decree, Plaintiff appealed and Mr. Walhouse, the late Acting Judge, was of opinion that "Mr. Morris," who had disposed of Appeal Suit No. 9 of 1848, "had sanctioned the institution of a suit by 1st Plaintiff and other acknowledged heirs for restoration of the property mortgaged" and observing that "in the present suit which is for restoration of the property with 12 years' porapaad, Plaintiffs do not even clearly shew the cause of action," and "the pleas urged are not such as could admit of a fair decision relating as they do partly to the mortgage and in a greater degree to mutual relationship and to the extent of respective rights," dismissed the original suit with costs to be borne by the parties respectively, declaring 1st Plaintiff and all lawful heirs of Oonyacha at liberty to sue on the man now indicated.

9. Against this decision Plaintiffs preferred a special appeal under No. 120 of 1856 on the grounds that the appeal decree was opposed to Section II and 63 of the Rules of Procedure according to which the defect in the plaint could have been remedied; that it was also opposed to Section 70 of the said Rules; that Plaintiffs were entitled to a decree in their favor inasmuch as 1st Defendant had admitted his mortgage lien and his alleged subsequent jenm was cancelled in Appeal Suit No. 9 of 1848 and that the Appellate Court had acted against law and practice in referring Plaintiffs to a fresh suit for the settlement of the question of 1st and 2d Defendants' heirship which could be determined by the present suit.

10. On this special appeal, the Court of Sudr Udalut, for the reasons and grounds shewn by Plaintiffs have remanded the suit for disposal on its merits, requiring the sum of rupees 19-11-5 portion of costs incurred in the special appeal suit to be included in the costs chargeable to the parties in the revised decree.

JUDGMENT.

11. The Court consequently in compliance with the order of

the Sudr Udalut resolves to remand the suit to the Lower Court to be replaced on the file and to be proceeded with on its merits as directed, charging the costs in conformity with the conclusion the Court may come to saving the stamp duty in this appeal which will be refunded to Appellant.

THE 30TH JANUARY 1857.

Appeal Suit No. 263 of 1856.

Appeal from the decision of Mr. George Martin Bass, Moonsiff of Pynaad, dated 21st April 1856.

Mamakandiagatha Oossan,..... ..... (1st Defendant,) Appellant.

Kodamally Karanjerry Kadoogan Nair, } (Plaintiff,) 1st Respt.
Tekedatha Ooken *alias* Tekedatha Ooneevalah, } (2d Defendant,) 2d do.

1. This an appeal from the decree of the Pynaad Moonsiff awarding to the Plaintiff the arrears of pattom on 6 parambas, the jenm property of the 2d Defendant, and assigned by him on kanom to the Plaintiff for fanams 500, and restoration of the parambas to the Plaintiff by the 1st Defendant in the year 1034 on payment of rupees 65-0-3 value of improvements.

2. It appears that the parambas were in the month of Kany 1022 rented to the 1st Defendant on a yearly rent rupees 25 which was duly paid up to 1029, but the rent subsequently having fallen into arrears the 2d Defendant assigned the paramba on kanom to Plaintiff granting ennuck to the 1st Defendant's address, which he refusing to accept, the Plaintiff instituted the suit.

3. In bar of restoration the 1st Defendant pleaded that after obtaining the parambas on rent from the 2d Defendant he paid to him the sum of rupees 25 in order to be allowed to hold the parambas undisturbed for 12 years and obtained a receipt; and subsequently in 1028 he paid a further sum of rupees 50 for the same parambas and certain other lands, consequently he was not called upon to restore the property; that the rent due was tendered but refused by the 2d Defendant.

4. The 2d Defendant admitted the plaint.

5. In his decree the Moonsiff upheld the receipt for the payment by 1st Defendant of rupees 25 to 2d Defendant, but discredited the 2d receipt for the sum of rupees 50, being of opinion that if the second sum had been paid as caykooly the pattom chit would have been renewed; he was of opinion that the second receipt had been collusively got up by 1st and 2d Defendants. He decided that 1st Defendant was not liable to be ousted until after the expiration of 12 years from date of assignment of the 6 parambas to him on verompattom, and accordingly held him in possession up to 1034 assessing the Plaintiff with costs of suit.

6. The 1st Defendant appeals against that part of the Lower Court's award setting aside his second receipt for rupees 50. His grounds of appeal are;

i. That the receipt for rupees 50 had been proved by witnesses;

ii. That on payment of caykooly there was no necessity for a renewal of the pattom chit;

iii. That the 2d receipt was affirmed in the decree passed in Original Suit No. 301 of 1854.

JUDGMENT.

7. The Court is of opinion that the alleged payment of rupees 50 as a second instalment as caykooly is exceedingly improbable. The 1st Defendant after obtaining the 6 parambas paid a certain sum as caykooly in order to hold undisturbed possession for a period of 12 years, while so before that period expired, the Court considers that the second payment is very improbable; and it further holds, with the Lower Court, that if this sum of rupees 50 had been paid for these parambas and certain other lands, the 1st Defendant, for his own protection, would have renewed the pattom chit.

8. The receipt for rupees 50 was not affirmed in the suit alluded to by the Defendant. No proof was adduced in that suit to prove the receipt.

9. Seeing no grounds for taking a different view of the case from the Lower Court, the original decree is affirmed and this appeal dismissed with costs against the Appellant.

THE 30TH JANUARY 1857.

Appeal Suit No. 265 of 1856.

Appeal from the decision of Chinna Iyen, District Moonsiff of Pattamby, dated 31st March 1856.

Kopathil Oony Mamod,.....(8th Defendant,) Appellant.

Moolapally Palathol Vassoo Devan Namboodry,	(Plaintiff,)	1st	Respt.
Aniathu Chembodathil Kristnen Nair,	(1st Defendant,)	2d	do.
Nediriy Nair,.....	(2d do.)	3d	do.
Oonaken Nair,.....	(3d do.)	4th	do.
Ramen Nair,.....	(4th do.)	5th	do.
Chiroo, (female)	(5th do.)	6th	do.
Kally, (ditto).....	(6th do.)	7th	do.
Parvady, (ditto).....	(7th do.)	8th	do.

1. The original suit was instituted for the recovery of rupees 6-13-9 arrears of pattom due on a paramba the jenm property of the Plaintiff and assigned on verom pattom to the 1st Defendant and his deceased elder brother Govinda Nair in the month of Medom 1010 on a yearly rent or porapaad of annas 9-2.

2. The Defendants 1st to 7th were exparte.

3. The 8th Defendant answered pleading that the paramba sued for was assigned by the Plaintiff's illom to the 1st to 7th Defendants' tarwaad on perpetual tenure and that he, 8th Defendant, had obtained the paramba on teer from the 1st Defendant paying him the sum of rupees 57-2-3 in the month of Mithonom 1029; that he, 8th Defendant, had subsequently improved the paramba.

4. The Moonsiff awarded the restoration of the paramba with arrears of rent, the Plaintiff paying the value of improvements rupees 18-10-9.

5. The 8th Defendant appeals. He urges, that the paramba was assigned on perpetual lease; hence it was wrong to award restoration.

That on the hypothesis that the paramba was to be restored, the value of the improvements amounts to rupees 123-0-0.

JUDGMENT.

6. On reference to the account prepared by the Ameen the

Court finds from the yadast recorded thereon that the Appellant was present when the Ameen valued the improvements, and altho' the account was not signed by either the Plaintiff or 8th Defendant, still it does not appear that any objections were brought forward before the Moonsiff. It is true the decree was passed two days after, but up to that time no objection was preferred.

7. The account itself argues with the Appellant's statements, so the only difference being some common jungle wood which it is not usual to set down as coorycoor.

8. The Court affirms the original decree and dismisses this appeal with costs against the Appellant.

ZILLAH CHICACOLE.

PRESENT: E. B. GLASS, ESQ., JUDGE.

THE 21ST JANUARY 1857.

Appeal Suit No. 26 of 1855.

Appeal from the decision of Moulavee Mahomed Yahia Ally Khan Saib, Sudr Ameen of Chicacole, dated 30th December 1854.

1. Patchah Apkhan *alias* Chundahmyah, } (Defts,) Appts.
2. Kossim Bee Bee, }

Marum Bee Bee, (Plaintiff,) Respondent.

1. Appellants state.—Respondent sued them for recovery of her 6th share of family property consisting in lands, houses, sites, produce and rent money &c. &c. valued at rupees 35-12-0 which case the Sudr Ameen examined and passed a decree against them for a piece of land producing yearly rupees 2-1-4, and a waste land valued rupees 2-12-6, with costs, with which being dissatisfied, they brought this appeal.

2. Appeal reasons.—The merits of this suit and those of the Appeals Nos. 27 and 28 are the same, they have stated their reasons at large in the objections filed by them in the latter case, they therefore pray to dispose of these cases at one time, and reverse the original decree with costs.

3. No answer by Respondent.

JUDGMENT.

4. This suit and the property on which it is brought is the

same estate, on which Suits Nos. 28 and 27 were brought. The whole questions in this case, as well as in those, depended on the Mahomedan law, which will be seen, was decided by the Sudr Udalut Law Officer, to preclude the claim of all the Respondents, to the shares they claimed in this estate of (*A*) their grandmother !! Vide decrees in Nos. 28 and 27 of 1855. So this decision of the Lower Court is likewise reversed, as illegal, and contrary to Mahomedan law, with all costs to be paid by Respondents.

THE 21ST JANUARY 1857.

Appeal Suit No. 27 of 1855.

Appeal from the decision of Moulavee Mahomed Yahea Ally Khan Saib, Sudr Ameen of Chicacole, dated 30th December 1854.

1. Patchah Apkhan *alias* Chundahmeyah
2. Kossim Bee Bee,

} (Defendants,) Appellants.

Chaundoo Bee Bee, (Plaintiff,) Respondent.

1. Appellants state.—Respondent sued them for recovery of her 6th share of family property, consisting in lands, houses, sites, produce and rent money &c. &c. valued at rupees 38-5-4, which case the Sudr Ameen examined, and passed a decree against them for a land producing yearly rupees 2-1-4, and a waste land valued at rupees 2-12-6, with costs, with which being dissatisfied they brought this appeal.

2. Appeal reasons.—The subject of this suit and that of the Appeal Nos. 26 and 28 being the same, they have stated their reasons at large in the latter case; they therefore pray to dispose of these cases at one time, and reverse the original decree with costs.

3. No answer by Respondent.

JUDGMENT.

4. This suit and the property on which it is brought, is the same estate, on which Suits Nos. 26 and 28 were brought. The whole questions in this case, as well as those, depended on the Mahomedan law, which will be seen, was decided, by the Sudr

Udalut Law Officer, to preclude the claim, of all the Respondents, to the shares they claimed, in this estate of (*A*) their grandmother! (vide decrees in Nos. 26 and 28 of 1855), so this decision of the Lower Court is likewise reversed, as illegal, and contrary to Mahomedan law, with all costs throughout to be paid by Respondents.

THE 21ST JANUARY 1857.

Appeal Suit No. 28 of 1855.

Appeal from the decision of Moulavee Mahomed Yahea Ally Khan Saib, Sudr Ameen of Chicacole, dated 30th December 1854.

1. Patchah Apkhan *alias* Chundahmeyah,
2. Kossim Bee Bee, } (Defendants,) Appellants.

Beemah Bee Bee, (Plaintiff,) Respondent.

1. Appellants state.—Respondent sued them for recovering her fifth share of the family property, consisting of lands, houses, sites, produce and rent money &c. &c. valued at rupees 230-0-0, which case the Sudr Ameen examined, and passed a decree against them for a land, producing yearly rupees 12-8-0, and a waste land valued at rupees 16-10-8 with costs, with which being dissatisfied they brought this appeal.

2. Appeal reasons.—The decision of the Sudr Ameen is contrary to Mahomedan Law, and justice, because the Respondent's mother, had died before the death, of her own mother! and she had no right to her mother's share. The reasons given by the Lower Court for rejecting the hibbahnamah No. 1 are insufficient, saying the document is not true! They therefore pray to reverse the original decree with costs.

3. No answer by Respondent.

JUDGMENT.

4. On reading over this record and those in Nos. 26 and 27 all of 1855, all brought on the same property and same points. The Court considered it necessary to make a reference, and obtain the opinion of the Mahomedan Law Officer, of the Sudr Udalut Court, to settle whether the objections made by the Appellants to

the claims of the Respondents, in these three suits, were supported by Mahomedan Law or not?

Queries proposed by the Civil Court of the Zillah of Chicacole, to the Mahomedan Law officer of the Court of Sudr Udalut.

i. A Mahomedan woman *A* had three daughters *B*, *C* and *D* and a son *E*, *C* had a daughter *F*, *D* had two daughters *G* and *H*, and *E* had a son *I*;

ii. *C*, *D* and *E* died when *A* was alive;

iii. *A* also died subsequently bequeathing all her property to *I* through a hibbanamah;

iv. *F* preferred a suit against *I* for the share of *C* from the estate of *A*, and likewise *G* and *H* brought two actions against *I* for the share of *D* from the estate of the *A*;

v. *I* argues that the right of *C* and *D* to the shares in the estate of *A* was cancelled according to the Mahomedan Law as they died when *A* was alive.

vi. Are the shares of *C* and *D* in the property of *A* ceased according to the Mahomedan Law, or not, as *C* and *D* died during the life time of *A*?

vii. Have *F*, *G* and *H* a right to recover the shares of *C* and *D*, or not?

You are to give your reply to this and name the authority in which it is to be found.

Answer of the Cauzee Ool Coozzat of the Court of Sudr Udalut.

If *C* and *D*, mentioned in the question, die when *A* is alive, the right of *C* and *D* in the estate of *A* being cancelled under the Mahomedan Law, *F*, *G* and *H* are not entitled to claim the shares of *C* and *D* from the said estate.—Vide Futave-i-Serajiya. From the foregoing answer it is clearly shewn that the Respondents in all three suits are not entitled to claim the shares of their deceased mothers from the estate of their grandmother *A*. Therefore the decree of the Sudr Ameen is reversed as illegal, and contrary to Mahomedan Law, and all costs original and appeal to be paid by Respondents.

THE 21ST JANUARY 1857.

Appeal Suit No. 43 of 1855.

Appeal from the decision of Mr. W. Sloan, Principal Sudr Ameen of Vizagapatam, dated 9th January 1855.

Badeda Ramachender Row, (Plaintiff,) Appellant.

1. Garoodah Tirpaty Gaury Nursiah,
2. Do. Venkiah,
3. Do. Juggunnaikooloo,
4. Pauloory Venkiah,

(Defendants,) Respondents.

1. Appellant states—He sued the Respondents for recovery of a house valued at 100 rupees and rent 43 rupees, which case, the Principal Sudr Ameen examined and dismissed, with costs! with which being dissatisfied, he brought this appeal.

2. Appeal reasons.—He is the only heir, to his sister Lutchmeeboyummah! she having died without having any children. The plea of the Respondents that the late Nursiah Puntooloo, his sister's husband, had adopted a boy, by name Venkataramaniah is not true. He therefore prays to reverse the original decree.

3. Answer by 1st, 2d and 3d Respondents. The late Principal Sudr Ameen, passed a decree in their favor against the said adopted son, in No. 166 of 1849, and rejected this Appellant's plea! of heirship! to his sister. This Appellant was supplemental Defendant in that case, and made no appeal against it!! The house in question was zufted for that decree amount. Consequently the Appellant has no right, to claim that house, now! They therefore pray to confirm the original decree with costs.

4. No answer by 4th Respondent.

JUDGMENT.

5. The Court having gone over this case, and record, observes the claim of this Appellant, is both groundless and irregular! By the decree No. 166 passed by Mr. Ross it appears, that the first three Respondents in this case, sued the adopted son of the Appellant's sister, for the rent money due by her, and a decision was given against him, as sued for. Mr Ross in the above decree stated that the right of heirship, of this Appellant, cannot be decided in that case, and ordered him, if he wished to do so, to bring a separate suit, against both parties! Till after 3 years the Appellant took no measures *whatever*, to bring a suit,

but after the house, and site belonging to the adopted father, of the boy, was zufted, for the decree amount in the said case, he brought the original suit, of this appeal for recovering, that property, as heir to his late sister, but did not include the adopted son in this case! It appears that the Appellant's sister, had died in the year 1848, and if he was her only heir alive, and no adoption had ever taken place, as he pleaded, he should have obtained a certificate of heirship, from the Civil Court, and brought a suit against the adopted son, for the whole estate of his sister, but this suit is brought quite contrary to what he was directed to do, and his statement that there are no heirs, but himself, is quite an evident falsehood, because had he such a claim he would have brought it forward long ago!! His appeal is therefore dismissed with all costs, and the Lower Court's decree confirmed.

THE 24TH JANUARY 1857.

Appeal Suit No. 40 of 1854.

Appeal from the decision of Butchoo Venkatasawmy, Moonsiff of Teekaly, dated 28th February 1854.

Calabarigay Seetarama Deetchatooloo,	(2d Plaintiff,) Appellant.
1. Rutnaia Naidoo, 2. Do. Gungadharoodoo, 3. Balaca Lutchoonu Naidoo,	(Defendants,) Respondents.

1. Appellant states.—The late Plaintiff sued Respondents for recovery of malgoozary lands 11 garces in extent producing yearly 50 rupees and 100 rupees past produce, which case the Moonsiff examined and dismissed with costs, with which being dissatisfied he brought this appeal.

2. Appeal reasons.—According to local custom, the head of Police of Teekaly by order of the Principal Assistant Magistrate, was present when the witness No. 30 on his part walked on the boundary mark with the prescribed ceremonies on oath; this took place by consent of both parties, but the said Magistrate cancelled this settlement, and ordered the late Plaintiff to sue before the Civil Court. Most of the witnesses on his part deposed that the lands in question belonged to his village, but the Moonsiff remarks the witnesses are not personally acquainted with the boundary marks! but heard it from their forefathers! He therefore prays to confirm his claim.

3. Answer by 1st and 2d Respondents. First Respondent states. The 2d Respondent was employed by him as a goomastah, in this matter, but he is not the owner of the estate. If he had even agreed to the above settlement that cannot affect his interests. He therefore prays to confirm the Lower Court's decree, and dismiss the appeal.

The 2d Respondent confirms the truth of the 1st Respondent's statement.

4. No answer by 3d Respondent.

JUDGMENT.

5. The Court having gone over this case, finds the decree of the Moonsiff perfectly correct! the late Plaintiff, and Respondents agreed, to allow a settlement, to be made, on the witness No. 30 pointing out, the lands in dispute! and walking over the boundary, but this said 30th witness, turned out to be, both a false, and a dishonest witness; and instead of the bounds of land, in dispute, pointed out 4 garces of land, which *had nothing whatever to do* with the ones, *he was employed to point out!* which the 2d Respondent protested against, and the Principal Assistant Collector finding the witness Nuckah Yerranaidoo, was both dishonest, and had been tampered with, quashed the whole proceedings, and referred the paties to the Civil Court! Against this order an appeal was made by the late Plaintiff, to the Collector, who confirmed his Principal Assistant's order! Even then, the late Plaintiff did not bring an honest suit, for the lands, *in dispute*, but included the lands, that the 30th witness, a dishonest, perjured cheat, pointed out, contrary to the terms of the Principal Assistant Collector's order; *and brought it for those whole lands!!* It was therefore impossible for the Moonsiff to do otherwise, than dismiss such a claim, and had he fined the witness No. 30, as well as the late Plaintiff, he would have served them right! and the Court would now fine the Appellant, but being a woman, others have got this up for her, without her being aware of the consequences! So the Lower Court's decree is confirmed, and the appeal dismissed, with all costs, original and appeal.

THE 24TH JANUARY 1857.

Appeal Suit No. 35 of 1856.

Appeal from the decision of Vudlamunnaty Seetapaty, Sudr Ameen of Itchapoor, dated 27th September 1855.

Duckata Haricroostnoo, (Defendant,) Appellant.

Nabby Unnapoornummah, (Plaintiff,) Respondent.

1. Appellant states.—Respondent sued him for recovery of 6 rupees value of produce, which case the Sudr Ameen examined and passed a decree as sued for with costs, with which being dissatisfied, he brought this appeal.

2. Appeal reasons.—The Respondent never gave him a cowl, nor did he ever pay her any produce. After the death of the Respondent's husband and his brother the wife of the latter had given him cowls, and received the produce since the year Keelaka (1848). The Sudr Ameen is not justified to pass a decree against him for produce which he paid; he therefore prays to relieve him from the claim, and order the Respondent to include the persons who received the produce, as Defendants in this case.

3. No answer by Respondent.

JUDGMENT.

4. The Court having gone over this record, sees no grounds whatever for an appeal, and considers the Sudr Ameen's decision quite correct! From the public documents, produced by the Respondent, it is perfectly clear, that she and Lutchanah, the wife of her husband's brother, have joint right, to this land, and its produce. The demands made by the Respondent, from Appellant, for the produce in question, and his promise, to pay the debt, is satisfactorily proved, by the evidence for Respondent. Though points were given to the Appellant, to prove his defence, he neglected to do so, and did not deposit batta, for his witnesses, and *pretended* he would bring them himself!! When there are joint holders, to the land, the plea of the Appellant, that he paid *the whole produce!* to one, is false, ridiculous, and quite unworthy of the slightest belief! and if even it was true, he must repay it! This appeal has been brought for no purpose, but for putting off, the payment of a just claim, and the Appellant's reflections on the Sudr Ameen, for injustice when his own neglect of the promise, to bring his witnesses himself, was the cause, shews a contempt of Court, and an indifference as to truth, that

renders his appeal both litigious ! and vexatious ! so the Court dismisses it, and fines him under Section XXXV, Regulation 4 of 1802 ten rupees, besides all costs, and confirms the Lower Court's decree.

THE 24TH JANUARY 1857.

Appeal Suit No. 36 of 1856.

Appeal from the decision of Vudlamunnaty Seetapaty, Sudr Ameen of Itchapoor, dated 27th September 1855.

Cadiyala Booddigaudoo, (Defendant,) Appellant.

Nabby Unnapoornummah, (Plaintiff,) Respondent.

1. Appellant states.—Respondent sued him for recovery of rupees 13-5-10, due on a sunnud, which case the Sudr Ameen examined and passed a decree against him for rupees 12-4 the principal, with proportionate costs, with which being dissatisfied he brought this appeal.

2. Appeal reasons.—As he had never taken a cowl from the Respondent why should he have executed the sunnud in question for the value of the produce. This voucher is not true, but a forgery by Respondent's uncle &c.; he therefore prays to reverse the original decree.

3. No answer by Respondent.

JUDGMENT.

4. The Court having gone over this record it appears the Appellant is a ryot, and engaged to cultivate the land, which is held jointly, by this Respondent and her brother-in-law's wife, and to pay the produce, *to both in equal shares ! !* The produce for the year 1854 which the Respondent should receive for her share, was spent, by the Appellant himself ! On demanding the debt he allowed it, and executed the sunnud marked *A*, to that effect? The truth of this document is proved by the writer of it, and two attesting witnesses ! This evidence is moreover supported by the evidence of the Bhooktah of the village. The whole statements being false, which have been brought forward by Appellant, and the appeal brought on litigious, vexatious, and false grounds, the Court dismisses the appeal, with all costs, fines Appellant 5 rupees under Section XXXV, Reg. IV of 1802, and confirms the Lower Court's decree.

THE 24TH JANUARY 1857.

Appeal Suit No. 37 of 1856.

Appeal from the decision of Vudlamunnaty Seetapaty, Sudr Ameen of Itchapoor, dated 27th September 185.

1. Nabby Venkata Jugganathum Puntooloo,
2. Do. Lutchanah,
} (Plaintiffs,) Appellants.

1. Julloo Ramanursoo,
2. Do. Lutchmunursoo,
} (Defendants,) Respts.

1. Appellants state.—They sued the Respondents for recovery of rupees 72-7 principal and interest dueon a bond, which case the Sudr Ameen examined and dismissed with costs, with which being dissatisfied they brought this appeal.

2. Appeal reasons.—The execution of the bond is proved by evidence, of witnesses Nos. 3, 4, 5 and 6. By the endorsement of the stamp vender it appears the stamp on which the bond is written was purchased by the Respondents for that purpose. As the 2d Respondent cannot write his name properly he has marked the bond; they therefore pray to confirm their claim.

3. No answer by Respondents.

JUDGMENT.

4. The Court agrees with the Sudr Ameen that the bond, is a forgery, and the circumstances, set forth in it, shew plainly it is so, for had the produce of seven years been justly due, no person would have allowed ryots, after not paying even *one year's sist*, to have gone on cultivating, for a second, far less, for seven! without taking measures, through Court, to recover each year's due, add to this the depositions of the writer, and the attesting witnesses, contradict, one another, throughout, and are evidently got up, and so glaringly false, neither the writer nor the attesting witnesses knowing any thing of the Respondents which renders their evidence unworthy of the slightest credit! The Lower Court's decree is therefore confirmed, and as the Appellants have thought proper, to bring an appeal, on what has already been proved, a *forged bond*, the Court under Section XXXV, Regulation IV of 1802, fines them 15 rupees, and orders them to pay all costs throughout original, and appeal, and dismisses the appeal.

ZILLAH COIMBATORE.

PRESENT : T. B. ROUPELL, ESQ., JUDGE.

THE 30TH JANUARY 1857.

Appeal Suit No. 35 of 1855.

Appeal from the decision of Vencatachella Moodelliar, District Moonsiff of Coimbatore, dated 20th June 1854.

1. Soobammaul,
2. Strenevassa Iyen, } (Defendants,) Appellants.

Anuntaramien, (Plaintiff,) Respondent.

1. This was an appeal from the decree passed by the late District Moonsiff of Coimbatore in Original Suit No. 646 of 1843, which affirmed to the Plaintiff, the exclusive right to use a certain irrigating channel, valued at 15 rupees, situated at Singanulloor in the Coimbatore talook.

2. The grounds of appeal are; 1st. That the said channel had been partly excavated within the Appellants' own land, it being admitted by the Respondent's witnesses that it was within the boundary hedge of the Appellants' field ; 2dly. That it was established in evidence, that the present channel was an old one, which had been jointly cleaned out by the parties to the suit and others ; 3dly. That the cognizance of a question of this nature appertained to the Collector, and not to the Civil Courts ; 4th. That the property litigated was undervalued.

3. In answer the Respondent urged that the fact of the channel passing through the Appellants' land of itself conferred no right thereto upon him. That there was no valid objection to be taken to the valuation of the property litigated, and after advertin g to his arguments set forth in the original pleadings, prays for the confirmation of the decree passed by the Court of primary jurisdiction.

JUDGMENT.

4. The Civil Judge considers that the original decree appealed against cannot be upheld in appeal.

5. The Plaintiff sued to obtain a judicial decision declaratory of his exclusive right to the possession and use of a certain irrigating channel, which claim was allowed by the District Moonsiff.

6. The Appellate Court holds that the Plaintiff has not made out a case of exclusive right to the channel in question, and therefore reverses the decree on the following grounds.

7. The Plaintiff stated that he had within a recent period purchased certain parcels of land, which were about 20 years ago irrigated by means of the channel in question, but which channel had since that period become filled up and totally out of use. That he and certain others subscribed a sum of money (but to which the Defendants were not contributors) and paid the same into the talook cutcherry for aiding in the construction of a new tank-sluice, from whence he (Plaintiff) dug the disputed channel for a distance of 700 yards, and thereby supplied his lands with water; but that the Defendants having also made use of the channel to irrigate their lands, he brought his action to have his exclusive right to the channel confirmed by a decree.

8. The Defendants admitted that the channel was an old one, but urged that as it passed through their lands they had originally benefited by it, and that the present channel was cleared out to the extent it traversed their lands at their own expense, and that they had also contributed to the erection of the sluice, though the fact had been artfully concealed by the Plaintiff who was an influential Curnum.

9. The Lower Court found that the channel in question originally appertained to the lands lately purchased by the Plaintiff. That it had been entirely filled up for the last 20 years, and was cleared out at the sole expense of the Plaintiff. The District Moonsiff also adverted to certain public accounts to shew that the Paintiffs and other individuals' lands (but not those of the Defendants) were cultivated by the water supplied by the new sluice, and he therefore considered that the Defendants had no concern with the channel, and gave the Plaintiff a judgment.

10. The Civil Judge considers that this view was erroneous and not borne out in evidence. The Plaintiff's 5th witness, one of the persons who sold the land to Plaintiff, deposed that he and others excavated the channel 35 years ago, but that it became out of use and his lands reverted to poonjah. That after he sold it to Plaintiff the latter excavated in part a new

channel, and cleared out the old one, which he admits runs through the Defendants' lands. That when he sold the land to Plaintiff the channel in question was not mentioned in the bill of sale.

11. It is clear from this important witness' statement, that the land, when sold to Plaintiff, was mere poonjah, and that no channel was sold to Plaintiff. It is also apparent from the whole evidence and admissions made that whatever channel was used 35 years ago to water the land in question had long ceased to have any existence, and hence the Appellate Court considers that, even supposing any claim to the channel had originally vested in the former occupants of the land now held by Plaintiff, such has ceased by long disuse and by the lapse and efflux of time.

12. In the course of the hearing of the case before the Civil Judge, the Plaintiff urged in support of his claim that the channel was excavated entirely on Circar perumboke land; if so, the claim fails on the point pleaded, as he has adduced no proof to shew that he obtained any sanction or authority from the Revenue department to possess himself (to the exclusion of all others, even the Government itself) of a slip of Circar land immediately adjoining the public high road extending for a distance of upwards of the third of a mile. On the other hand if the plea be true that the channel traverses the lands of the Defendants (as appeared to the Judge on inspection to be the fact) it is not to be entertained that after an interval of between 20 and 30 years' disuse, the Plaintiff could come forward to assert a right to enter upon those lands, and cut a deep channel throughout the whole length of his neighbours' very valuable lands, for his own sole and exclusive benefit.

13. Upon a full consideration of all the circumstances in evidence in this case, it appears to the Civil Judge that the Plaintiff has shewn no right or title to the exclusive possession and use of the water course in question, founded either on a valid purchase, or upon prescriptive right, or upon sanction given by the Government authorities, and he therefore reverses the original decree and directs the costs to be paid by the Respondent.

ZILLAH COMBACONUM.

PRESENT: G. T. BEAUCHAMP, ESQ., CIVIL JUDGE.

THE 20TH JANUARY 1857.

Appeal Suit No. 325 of 1854.

Appeal from the decision of Appasawmy Pillay, District Moonsiff of Sheally, dated 29th September 1854.

Appasawmy Pillay *alias* Appah Pillay, } (Plaintiff,) Appellant,

Vakeel Ramien,

versus

Sokalinga Pillay, (Defendant,) Respondent.

1. This suit was laid to recover rupees 150 due under a bond. The claim was dismissed by the District Moonsiff.

2. The Plaintiff appeals and urges;

1st. That he has fully proved the payment of the consideration, whilst the Defendant admits that he executed the bond;

2d. That his witnesses do not live within his range, and are not therefore under his influence as the District Moonsiff has assumed;

3d. That a bill of sale for the land referred to in the bond was passed to the Defendant by the Defendant's 4th witness on the day after the bond and is now in the hands of the last purchaser of the land, who if summoned will refute the statements of the Defendant's 4th witness.

4th. That the Defendant has not questioned the fact that the bond was attested by the 2d and 3d witnesses;

5th. That witnesses very commonly do not attach their names to bonds in regular succession and cannot be expected to recollect such particulars as this; and

6th. That it is not probable that the Defendant would have allowed the bond to remain in his possession if the consideration for it had not been paid.

3. The Respondent urges;

1st. That he has proved that the consideration was not paid;

2d. That the sale deed executed to the Defendant fell into the hands of the last purchaser in consequence of the Plaintiff's failure to pay the amount of the bond to the Defendant, who could not complete the purchase.

JUDGMENT.

4. I do not concur in the view taken of this case by the District Moonsiff,

5. It is clear that the district of the Plaintiff, who is a Curnum, does not include the village in which his witnesses reside.

6. The fact now admitted by the Respondent that a bill of sale was passed to the Defendant by the 4th witness for the Defendant proves that that witness has suppressed the truth and supports the claim by shewing that the purpose for which the loan was required as set forth in the bond was actually completed.

7. That the bond was attested has never been denied by the Defendant and I attach no importance to the fact that witnesses when questioned on such a point failed to describe correctly the order in which they attached their signatures to the deed and other details connected with the examination of the coins paid to the Defendant and so forth.

8. It seems to me very improbable that the Defendant should have allowed the Plaintiff to retain the bond after he had refused to pay the consideration without so much as a word of remonstrance on the subject.

9. I find the Plaintiff in possession of the bond which contains the clearest admission that the consideration was paid and consider that the evidence for the Plaintiff supported by the cir-

cumstances outweighs that for the Defendant. I therefore reverse the original decree and adjudge that the Defendant do pay the sum claimed with all costs and interest on the principal from the date of the plaint to the Plaintiff.

ZILLAH CUDDAPAH.

PRESENT: WILLIAM ELLIOT, ESQ., CIVIL JUDGE.

THE 31ST JANUARY 1857.

Appeal Suit No. 130 of 1856.

Appeal from the decision passed by C. Anuntachary, District Moonsiff of Tungatoor, dated 29th April 1856.

1. P. Vengannah,
2. Moosaligary Atchannah, } (Defendants,) Appellants,

versus

1. K. Lutchannah,
2. T. Rama Naidoo, } (Plaintiffs,) Respondents.

1. This was an appeal to reverse the original decree which awards against the Defendants the right of certain puttah lands and their produce for the year 1854 valued at rupees 150.

2. The grounds for the appeal were;

1st. That the Plaintiffs were unable to prove that they were in possession before the year 1854 the produce for which year they claim, whilst the 1st Defendant's uncle Ayappah Naidoo's name is entered in the settlement accounts of the District;

2d. That the puttah used to be in the 1st Plaintiff's name only, but is now in the names of both Plaintiffs; .

3d. That the pymash accounts and further witnesses should be sent for and examined; and

4th. That the Respondents were in possession of the land sought to be recovered.

3. The appeal answer contains arguments against the appeal.

4. The Plaintiffs in the original suit laid claim to two parcels of land Nos 106 and 50 situated in the hamlet of Isakapully attached to Wobalum in Sidhout which were entered in their puttah, but in the fusly 1263 (A. D. 1853-54) had been usurped by the Defendants who prevented those to whom the Plaintiffs had rented them from carrying on their cultivation, which lands being valued at 75 rupees they now sue to recover, together with the loss of produce valued at 75 rupees, total rupees 150.

5. The 2d Defendant in his answer fully acknowledged the land was entered in the puttah of the 1st Plaintiff, but observed that others used to enjoy the same. He made no objection whatever to the valuation set, by the Plaintiffs, upon the said two lands, and said the 1st Defendant was in possession and had been for the last 15 years.

6. The 1st Defendant allowed judgment to go by default.

7. The Plaintiffs filed the order of the then Head Assistant Collector, Mr. Blair, to the Tahsildar of Sidhout, dated 22d July 1854 (marked *A)*, another dated 27th November of the same year *(B)* directing the lands in dispute to be put in possession of the Plaintiffs and to report if the Defendants made any further hindrance. An appeal was made against this order which was however confirmed *(C* No. 21) also the puttah for the past fusly 1263 (A. D. 1853-54) (marked *D* No. 23).

8. The Defendants seemed nevertheless to have violently opposed the orders issued in the matter and were with others fined, as learnt from the order of the Tahsildar to the village officers of Wobalum, in which it is stated that the ryots Samanah and others were by the Head Assistant Mr. Blair's order No. 271 dated 10th November 1854 fined 62 rupees for forcibly preventing the 2d Plaintiff from cultivating his land and to warn all parties not to interfere with the said Ramanaidoo (marked *E)*.

9. The 6 witnesses for the Plaintiff, of whom two were village Curnums, deposed to the Plaintiff having had possession for many years and that they rent it out to whomsoever they please, and if the rent is not regularly paid give the same to any other cultivators ready to take up the same, the Plaintiffs paying the Government revenue.

10. The witnesses for the Defendant spoke also in favor of the Plaintiffs' claim and added that the 1st Defendant being an old man, the puttah continued in the name of his brother-in-law's son (2d Plaintiff) for fusly 1263.

JUDGMENT.

11. It appears from the puttah filed by the Plaintiffs marked *D* that the lands the recovery of which is now sued for are therein duly entered. The Defendants gave as one of the grounds of the appeal that the Plaintiffs could not prove that they were in possession prior to the year 1854 for which the puttah has been produced, but the Plaintiffs have filed two other puttahs *F* and *G* to disprove this point, viz. one for fusly 1235 (A. D. 1825-26) and 1251 (1841-42) and could produce puttahs for intermediate years if required, but these two are sufficient completely to disprove the assertion of the Defendants.

12. With regard to the pymash accounts being examined the Vakeel for the Defendants presented a yadhast on the 27th ultimo to that effect; but it signifies little whose name was then entered, and the 1st Plaintiff at least has had possession of the said lands since 1825, or for 30 years and the then Head Assistant, Mr. Blair, must also have been perfectly aware of this when he gave his order of the 22d July 1854 directing the lands to be put in possession of the Plaintiffs, and for resisting his orders fined certain parties by a takeed dated 10th November of the same year.

13. The Defendants say they are in possession of the land. This is possible, for if otherwise, this case would probably not have been instituted, but it merely shews that the 1st fine was not sufficient to deter them from interfering with the Plaintiff, and it is certain they can have no right whilst the puttah is in the name of another, unless they held some counter document; but the said Defendants have produced no documents in their favor nor had they any when before the Head Assistant Collector, in whose order it is noticed that Atchanah (the 2d Defendant) had offered to take some of the land from the Plaintiffs on cowl to make up for other land injured, but if the Plaintiffs refused, he, Atchanah, would throw up the land he held of them. There are other matters in that order which tend to establish the Plaintiffs' right.

14. The value of the parcel No. 50 was fixed at rupees 15 by the Plaintiffs, and No. 106 at rupees 60, and the Defendants have not attempted to prove that the said valuation was incorrect.

15. The Civil Judge therefore affirms the decree of the Moonsiff of Tungatoor, the Defendants, Appellants, paying all costs of both suits.

THE 31ST JANUARY 1857.

Appeal Suit No. 15 of 1857.

Appeal from the decision passed by M. Veerasawmy Naidoo, District Moonsiff of Doovoor, dated 28th November 1856.

B. Mullapah, (1st Defendant,) Appellant,

versus

N. Govindapah, (Plaintiff,) Respondent.

1. This was an appeal to reverse the decree of the Acting Moonsiff who adjudged the Defendant to deliver over to the Plaintiff a house valued at rupees 40-4-0.

2. The grounds for the appeal were;

1st. That the bond is a forgery bearing Defendant's mark when he is able to sign his name;

2d. That the Defendant was not at the place on the date of the bond; and

3d. That the decree was passed prior to the receipt of this Court orders to admit the Defendants' answer.

3. The Defendant concluded by praying that the case might be remanded to receive his answer and examine his witnesses.

JUDGMENT.

4. For the reasons stated by the Appellant the case is remanded to receive his answer for full examination and for fresh judgment.

ZILLAH GUNTOOR.

PRESENT: THOMAS ONSLOW, ESQ., ACTING JUDGE.

THE 2D JANUARY 1857.

No. 40 of 1856.

Appeal from the decision of Taudapully Kroostniah, District Moonsiff of Cauza, dated 31st October 1856; in Original Suit No. 404 of 1856.

1. Prayaga Soobbiah *alias* Chena Soobiah, and
2. His son Chena Appiah Sastry,

} Appellants, (Defendants.)

Aucha Nursiah, Respondent, (Plaintiff.)

1. This suit was instituted for the recovery of rupees 98-8-0, viz. rupees 50 principal on document in dispute, rupees 48-8-0 interest thereon together with subsequent interest and costs.

2. The Moonsiff decreed that Defendants who are of an undivided family should pay Plaintiff rupees 98-8-0 together with subsequent interest and costs.

3. The Defendants appeal and object;

1st. That decree in Suit No. 226 of 1855 was reversed by this Court's decree in Appeal Suit No. 33 of 1855, and that a perusal of the said suit will shew that document in dispute; the demand and acknowledgment were not proved;

2d. That the adoption of Plaintiff was declared in Appeal Suit No. 33 to be false; that Plaintiff's Document *B* is invalid; that a certificate prescribed by Acts Nos. XIX and XX of

1841 has not been obtained by Atchanah's widow, and that Plaintiff's Document *B* does not authorize Plaintiff to recover the sum in dispute ;

3d. That Plaintiff's Document *C* does not authorize Plaintiff to bring this suit ;

4th. That para. 11 of the Moonsiff's decree shews that Moonsiff is not friendly towards Defendants ;

5th. That Defendants did not file an answer in original suit, as this case can be decided by the former record.

4. The Plaintiff answers ;

1st. That the Court in Appeal Suit No. 33 of 1855 did not declare any opinion on the merits of this case, and that Moonsiff in Original Suit No. 226 confirms Plaintiff's claim ;

2d. That the late Civil Judge declared the widow of Atchanah to be the legal heiress, and that Plaintiff's Document *B* was executed in his favor; that Acts Nos. XIX and XX are not applicable to this case and that Document *B* allows Plaintiff to recover all debts due to the estate of Atchanah ;

3d. That Plaintiff's Document *C* shews that he was authorized to bring this suit ;

4th. That Moonsiff has no unfriendly feeling towards Defendants ;

5th. The 5th objection of Defendants requires no answer.

JUDGMENT.

5. With reference to the former proceedings in Original Suit No. 226 of 1855 and the appeal therefrom No. 33 of 1855 in connection with the present proceedings in Original Suit No. 404 and the present appeal therefrom, the Acting Civil Judge sees no reason for reversing the Moonsiff's decision, and considers the objections offered in appeal of no weight and the acts referred to as irrelevant to the matter in dispute.

6. With reference to the late Civil Judge's proceedings in Appeal Suit No. 33, the objection which then proved fatal to the suit has been removed by the widow of Atchanah and her daughter-in-law Ammamah having by deed duly registered under date 28th December 1855, constituted Plaintiff their heir.

7. The Acting Civil Judge sees no reason for discrediting

the evidence regarding the security bond and as regards the writer denying he wrote the said document, it is manifest he was tampered with, and moreover appears to have had dealings with Appellants and the Moonsiff on comparing his writing with that in the document was satisfied he was the writer.

8. The Moonsiff's decision is confirmed with all costs.

THE 15TH JANUARY 1857.

No. 41 of 1856.

Appeal from the decision of Goondimada Tirmalrow, District Moonsiff of Bauputla, dated 11th November 1856; in Original Suit No. 698 of 1856.

Comaravaloo Lutchmecauntarow, (Appellant,) Defendant.

Comaravaloo Venkoyemma, (Respondent,) Plaintiff.

1. The Plaintiff instituted this suit against Defendants for the recovery of rupees 4 on account of past maintenance, rupees 13 for brass utensils, rupees 37 the value of a tiled house and ground, and future maintenance at the rate of 4 rupees a month and rupees 5 per annum for cloths.

2. The Moonsiff gave judgment awarding Plaintiff rupees 8 for past maintenance, one brass utensil of the value of rupees 1-8-0, a brass tumbal of the value of rupee 1, a room valued at rupees 10, and proportionate costs of suit, and furthermore that 2d Defendant should pay Plaintiff for her life, rupees 2 for cloths annually from 12th August 1856, and 2 rupees per mensem for maintenance from 12th November, and disallows the rest of Plaintiff's claim and exonerates 1st Defendant from all liability.

3. The 2d Defendant appeals and objects ;

1st. That 2d Defendant, Appellant, in admitting that the minor who is living with him being bound to support Plaintiff, does not say that the minor will always live with him as undivided ;

2d. That as the minor may at any time hereafter take away his property and leave Appellant, the Appellant is not bound to pay maintenance during the whole period of her (Plaintiff's) life ;

3d. That Plaintiff's evidence regarding the extent of the family property is contradictory and not so extensive as alleged and there are debts on the property more than its value ;

4th. The records of the Session Court shew that Defendant's property was stolen ;

5th. That the late Civil Judge in his proceeding of 6th September 1851 ruled that widows should not be supported, if not residing in the village with the family ;

6th. That as the 2d Defendant was adopted by his uncle, the 1st Defendant only is the guardian of the minor and can, if she likes, take away the minor.

4. Plaintiff answers ;

1st. That Defendant admits he is in possession of the joint property and therefore the minor is not to support Plaintiff;

2d. That 2d Defendant is bound to pay Plaintiff maintenance, as it cannot be said how long the minor may reside jointly with 2d Defendant ;

3d. That the value of the property was mentioned by the witnesses according to estimation and the contradictions in evidence alluded to are not important ;

4th. It was not proved in the Sessions Court that property was stolen to the extent alleged ;

5th. The proceedings alluded to of the late Civil Judge are not applicable to the present case as Plaintiff wishes for a house in her village ;

6th. That 2d Defendant has admitted he is living undivided and in possession of the family property ; whilst so, the 1st Defendant cannot take away the minor's property whilst under the support and guardianship of 2d Defendant.

JUDGMENT.

5. The Acting Civil Judge considers the Moonsiff's decision correct as far as awarding maintenance to Plaintiff, but that his decree requires amending and modifying.

6. The 2d Defendant takes exception to that part of the Moonsiff's decree, ordering 2d Defendant to pay maintenance during the period of Plaintiff's natural life, as in the event of 1st Defendant and the minor hereafter leaving 2d Defendant and taking

away their property and becoming divided, the 2d Defendant would not be liable for Plaintiff's maintenance, and this is true, and the Moonsiff ought to have granted maintenance to be paid by 2d Defendant only as long as the family were joint and undivided.

7. Both pleaders in this case have pleaded orally before the Court as to the decree of the Moonsiff, &c. &c.

8. The 2d Defendant's pleader does not object to the payment of maintenance so long as the family are undivided, and requests that the Plaintiff may live either with Defendants or in the village, and this Plaintiff's pleader consents to, and Plaintiff in the 5th para. of her appeal answer appears to desire and wish to reside in her village, and 2d Defendant's pleader consents to provide a suitable residence for her.

9. The 2d Defendant's pleader further requests that 2d Defendant may be allowed to pay the maintenance decreed in the manner most convenient to himself; this the Acting Civil Judge sees no objection to, provided it is regularly and punctually paid at the rate decreed, either daily, weekly, or monthly, *without alteration* of the period, and as 2d Defendant's pleader agrees to pay the maintenance daily, it must be so paid.

10. The Moonsiff's decree is therefore modified and 2d Defendant decreed to pay maintenance as decreed so long only as the family are undivided, and as 2d Defendant has promised a suitable place for Plaintiff to reside in, and Plaintiff consents to reside in her village, it will not be necessary to award any sum for a room. With the above exceptions the Moonsiff's decree is confirmed with costs.

THE 20TH JANUARY 1857.

No. 43 of 1856.

Appeal from the decision of Goondimada Tirmalrow, District Moonsiff of Bauputla, dated 12th November 1856; in Original Suit No. 729 of 1856.

1. Lauvoo Veerunna,
2. Do. Chena Bhadrappa, } Appellants, (Defendants.)

Sunka Chena Appiah, Respondent, (Plaintiff.)

1. This is a suit for the recovery of a piece of ground valu-

ed at 15 rupees situated at Peda Nundepaud in the talook of Pruttepaud.

2. The Moonsiff decided that the ground in dispute should be made over to Plaintiff by Defendants with costs.

3. Defendants appeal and object ;

1st. That Defendants' document No. 1 was proved, and the evidence of their witnesses 1st, 2d, 3d, 4th and 5th proved their title to the ground in dispute ;

2d. That Plaintiff's 1st witness is related to Plaintiff, and so is his 2d witness, and the 3d witness lives conjointly with Plaintiff ;

3d. That Plaintiff's documents *A* and *B*, cannot be admitted as evidence against them in this suit, as they relate to a former suit &c. ;

4th. Their exists no wall on the northern boundary of the ground in dispute, but the Defendants' 1st and 2d witnesses mentioned merely as a distinguishing mark of the northern boundary that it ran in a direct line to the northern wall of Sunka Lingarauze's house, but the Defendants' document No. 1 does not shew the boundary mark, but mentions the number of yards ;

5th. That though Defendants' witnesses in Suit No. 90 of 1826 were not believed, yet Defendants' 1st and 2d witnesses in this suit ought to have been credited ;

6th. Defendants' document No. 1 mentions the eastern boundary of the ground to be the wall and grain pits intimating thereby that some waste or vacant ground exists near the pits. That Defendants' document No. 1 was executed prior to the suit between Plaintiff and Defendants' 3d witness, and therefore it cannot be justly said the document is a fabrication in order to usurp the ground &c.

4. The Plaintiff answers ;

1st. That Defendants' 3d witness and 1st and 2d witnesses who gave evidence on behalf of 3d witness in Suit No. 90 and 1st Defendant who was 3d witness in the said suit have fabricated document 1 in order to usurp a portion of ground claimed, and therefore it is evident they are not to be credited and that Plaintiff's 4th and 5th witnesses have not deposed as alleged ;

2d. That Plaintiff's 1st, 2d and 3d witnesses are not so nearly related to him as they are to Defendants' 3d witness ;

3d. That as Defendants' 3d witness was a party to suit No. 90, the documents *A* and *B*, are admissible in this suit ;

4th. That the Moonsiff's decree shews that the evidence of Defendant's 1st and 3d witnesses proves that the northern boundary of the ground in dispute does not run in a direct line to the northern wall of the cattle shall of Sunka Lingarauze, Defendant in Suit No. 90, and as document No. 1 does not specify the boundary, it is of no use ;

5th. That Suit No. 90 of 1856 was disposed of in 1856. That as Defendants' 1st and 2d witnesses are in their (Defendants') debt, their evidence is inaadmissible ;

6th. That Defendants' document No. 1 does not shew there is any vacant ground and there being grain pits in the place does not prove such exists. That document No. 1 might have been fabricated and antedated and shewn to the Ameen. The Defendants' statements are false.

JUDGMENT.

5. The Acting Civil Judge having duly considered this case and the appeal objections, sees no reason for interfering with the decision of the Moonsiff.

6. The Acting Civil Judge concurs in the remark of the Moonsiff that no reliance can be placed upon the statements of some of the principal witnesses for Defendants.

7. In a former Suit No. 90 of 1856 the present Plaintiff and present 3d witness for Defendants were parties in a ground dispute which resulted in Plaintiff's favor, in which case the present 1st Defendant was 3d witness for the then Defendant.

8. In the decree in the above Suit No. 90, the northern boundary of Plaintiff's property was settled as extending to the northern wall of the cattle stall of the then Defendant, the present 3d witness for Defendants.

9. According to this decree and the plan document No. 2 of Defendants before the Court, it would seem that the piece of ground now claimed by Defendants was included in Plaintiff's boundary as then settled by decree in that Suit (No. 90), if so, why was 1st Defendant silent ? as he never apparently made any objection to the decree nor claimed the ground, and as he (1st Defendant) was 3d witness in the said suit, it is very manifest he must have been aware of the decision.

10. There is evidently some truth in the Moonsiff's remarks

regarding a collusion between present Defendants and their 3d witness, as present 1st Defendant was 3d witness for Defendant in the former suit (No. 90), and the then Defendant is 3d witness for Defendants in the present suit, thus playing into each other's hands as witnesses; the present 3d witness having in this instance most probably put forward Defendants to claim the portion of ground in dispute, which he has no title to, in consequence of Plaintiff having gained his suit against the present 3d witness who was Defendant in Suit No. 90 of 1856.

11. The Defendants' document No. 1, a piece of plain paper, cannot be trusted asany proof of Defendants' (Appellants') claim, neither can the witnesses in support thereof be relied on, and whose appeal arguments are weak and unsatisfactory.

12. The Moonsiff's decre is confirmed with all costs.

ZILLAH HONORE.

PRESENT: W. M. MOLLE, ESQ., CIVIL JUDGE.

THE 17TH JANUARY 1857.

No. 98 of 1855.

Appeal from the decision of Meer Mooneer Ally Saib, Acting Moofty Sudr Ameen, dated 8th February 1855.

Chettoo Ocda Shetty, (Plaintiff,) Appellant.

1. Dewjy Oomursy Shetty,
2. Duyall Moorarjee Shetty, } (Defendants,) Respondents.

1. The Plaintiff sued to recover from Defendants rupees 2,497, compensation for loss and personal damages sustained. He stated that the Defendants, envying his position as trader at Coomptah, conspired to injure him, and coming to his house on the night of the 27th November 1854, abused and assaulted him, and then preferred a false complaint against him to the Police, charging him with having snatched jewels worth rupees 1,000 from their persons and caused the 2d Defendant to be wounded on the lip, in consequence of which Plaintiff (with 3 other persons) was committed by the Police to the Criminal Court, but was released, the Criminal Court being satisfied that the charge was false, and was got up to subject him (Plaintiff) to loss and disgrace. The Plaintiff, therefore, claimed from Defendants rupees 350 loss incurred by him for 14 days during which he was kept from his business owing to the said complaint, and rupees 2,147 personal damages; total rupees 2,497.

2. The 1st Defendant stated that the complaint preferred by him and 2d Defendant against Plaintiff was true; but that Plaintiff was released by the Criminal Court for want of sufficient

proof, and that under the circumstances of the case the Plaintiff's claim for damages is not admissible by the Court. He added that a reference to the proceedings in the said Criminal case will shew that Plaintiff is not a reputable character.

3. The 2d Defendant answered to the same effect as the 1st Defendant.

4. The Acting Moofty Sudr Ameen deemed it unnecessary to record any points for proof in this suit. The Moofty Sudr Ameen observed that on reference to the proceedings of the case alluded to, he found no reason to suppose that the assault and wounding complained of by the Defendants had not been actually committed; on the contrary the proceedings shewed that the offence had been committed, but that the charge was dismissed by the Criminal Court, owing to certain discrepancies in the statements made for the prosecution and to the evidence adduced in the case not being sufficient for conviction, and that under these circumstances the observation made in the sentence of the Criminal Court, that the charge was evidently preferred with the view of disgracing the Plaintiff, was entirely unwarranted by the circumstances of the case. The Sudr Ameen further observed that a claim of this nature was entirely untenable and unprecedented in this district. He therefore dismissed the claim with costs, and fined the Plaintiff rupees 100, under Section IX, Regulatton II of 1802, and the Plaintiff's Vakeel his fèes under Clause 6th, Section XX, Regulation XIV of 1816.

5. In the appeal petition, the Plaintiff's Vakeel urges;

1st. That the Sudr Ameen did not take into his consideration the following circumstances under which the Plaintiff is entitled to the damages claimed, viz.

i. That the Defendants had, in the first instance, gone to Plaintiff's house and commenced a quarrel with him;

ii. That before the Police they retracted their statement that Plaintiff had snatched from them jewels belonging to them worth more than rupees 1,000;

iii. That the 2d Defendant's statement that he was severely wounded on the lip with a knife is rendered doubtful by the Doctor's certificate;

iv. That the complaint was dismissed by the Moofty Sudr Ameen as groundless; and

v. That the remark made by the Moofty Sudr Ameen in his sentence that Plaintiff has incurred disgrace in conse-

quence of the Defendants' proceedings was not objected to by the higher authorities on review of the criminal proceedings ;

2d. That Plaintiff's claim for damages is cognizable under the provisions of Section V, Regulation II of 1802, and that the Acting Moofty Sudr Ameen was not justified in taking exceptions to the sentence passed by the late Moofty Sudr Ameen ;

3d. That the decision alluded to by the Acting Moofty Sudr Ameen in his decree does not bear on the merits of this suit ;

4th. He, therefore, prays that the fines imposed on him and Plaintiff may be remitted, and a fresh decree passed upon receiving proof from Plaintiff.

6. No answer in appeal.

JUDGMENT.

7. Plaintiff claims damages for defamation and loss sustained, alleging that on the night of the 27th November 1854, the Defendants came to his house and abused and assaulted him (Plaintiff) and others; that Defendants then preferred a false complaint to the Police charging him (Plaintiff) and others with assault and wounding ; that this charge was dismissed by the Criminal Court; and that he (Plaintiff) is therefore entitled to compensation for defamation and for loss sustained by his detention from business for some days in consequence of the said charge.

8. The Defendants plead that the charge of assault, and wounding preferred by them, was perfectly true, but that it resulted in the release of the accused, from insufficiency of proof, and that Plaintiff's claim to damages is untenable.

9. On a perusal of the proceedings in this case the Court observes, that the charge alluded to was dismissed by the Criminal Court from insufficiency of proof, but there is sufficient proof that an affray and assault took place at Plaintiff's house, on the night in question, and the evidence before the Criminal Court, although considered by the late Moofty Sudr Ameen, insufficient for the conviction of the Plaintiff, tends to shew, that *there were* good grounds for the complaint and that it was not a fabricated one.

10. Under these circumstances the Court considers that the observation recorded by the late Moofty Sudr Ameen in his remarks on the case, that the complaint appears to have been pre-

ferred with the view of damaging the character of the Plaintiff, was entirely unjustifiable and superfluous.

11. For the above reasons the Court affirms the decree of the Lower Court in so far as it dismisses the Plaintiff's claim with costs, but as Plaintiff was evidently induced to institute this suit by the abovementioned observation of the late Moofty Sudr Ameen, the Court modifies that part of the decree which fines the Plaintiff and the pleader under Regulations II of 1802 and XIV of 1816, and warns the latter against encouraging or promoting groundless actions.

THE 17TH JANUARY 1857.

No. 184 of 1855.

Appeal from the decision of Mr. L. S. Rozario, District Moonsiff of Honore, dated 18th September 1855.

Govinda Bhut, (Plaintiff,) Appellant.

Venkutramanah, (Defendant,) Respondent.

1. The Plaintiff sued to recover from Defendant rupees 578-13-8, principal and interest due on a bond.

2. The Defendant admitted execution of the bond, but denied having received any consideration on account of it. He stated that he executed the bond in Plaintiff's favor in consequence of an agreement which took place between them, to the effect that Plaintiff was to supply Defendant with money to maintain the expenses of a suit against one Heroor Luxmy Narnapa for the recovery of a land with its mesne profits, and that in the event of Defendant's obtaining a favorable decision in the suit, he was to give Plaintiff two thirds of the mesne profits recovered; that the Plaintiff executed a karar to that effect in his (Defendant's) favor, and that the dispute between him and Luxmy Narnapa having since been settled amicably, he (Defendant) had no occasion to institute a suit against the said Luxmy Narnapa.

3. The Defendant died, and his son was made supplemental Defendant.

4. The Moonsiff of Honore, being of opinion that the document sued on was executed under the circumstances stated by the Defendant, dismissed Plaintiff's claim with costs.

5. The Plaintiff appeals, and urges;

1st. That the circumstances stated by Defendant as those which led to the execution of the bond sued on, are of an improbable nature;

2d. That the Moonsiff has not correctly appreciated the evidence of his witnesses;

3d. That the karar (exhibit 1) alluded to by Defendant, if genuine, ought to have been drawn up in Plaintiff's own handwriting, and its attesting witnesses should have been the same as those of the bond *A*;

4th. That the bond sued on is not only admitted by Defendant, but is also proved by the testimony of his (Plaintiff's) witnesses;

5th. That had Defendant's plea been true, he would have of course taken steps to have the bond cancelled after the amicable settlement of the dispute between Defendant and Luxmy Narnapa;

6th. That it is admitted by the Moonsiff that the amount of the bond differs from the sum which the Defendant alleges was agreed to be paid to Plaintiff out of the mesne profits which Defendant might recover from the said Luxmy Narnapa.

6. The Defendant has answered in support of his defence and the original decree.

JUDGMENT.

7. The fact of the bond at issue having been executed under the circumstances alleged by the original Defendant, and not for money actually received is satisfactorily proved by the deed No. 1 filed by the Defendant.

8. The authenticity of this deed is established by the testimony of 1st, 2d and 3d witnesses examined by Defendant, and the Plaintiff's signature to this deed No. 1 perfectly agrees with the signatures affixed by him to several papers in this case until the bond in question was shewn to him and he was examined regarding it before the Lower Court. Since that time the Plaintiff has purposely signed his name in a manner somewhat different from his previous signatures. The 1st and 2d witnesses examined by Plaintiff do not state that any adjustment of accounts took place before them, nor do they give any particulars of the accounts which are said to have led to the execution of the bond.

9. Plaintiff states in his deposition, that the bond was executed for sums lent to Defendant during three or four years pre-

viously, and also for nine or ten hoons lent two or three days before the execution of the bond to defray the expenses of an action against Luxmy Narnapa. This statement, however, is incredible, as the bond makes no specific mention of these advances, nor of the putty alluded to having been returned to Defendant. The bond in question is shewn by the evidence in the case to have been executed by Defendant on the understanding that Plaintiff was to advance the sum required by Defendant to prosecute a suit against one Luxmy Narnapa and that he (Plaintiff) was to receive ⅔ds of the mesne profits (rupees 560 and odd) which Defendant expected to recover in that suit. The amount of the bond at issue agrees with the abovementioned ⅔ds within a very trifling amount. This circumstance is strongly corroborative of the correctness of the defence. Defendant offered to take oath to the truth of his defence, but Plaintiff declined the proposal. He also refused to swear to the truth of his claim as proposed by Defendant.

10. For the above reasons, the Court is of opinion that the consideration of the bond was not paid, and therefore affirms the decree of the Lower Court with costs.

THE 17TH JANUARY 1857.

No. 238 of 1855.

Appeal from the decision of Appeya, District Moonsiff of Coompta, dated 12th November 1855.

Ganapa Bhut, (Plaintiff,) Appellant.

Soobbaya, (Defendant,) Respondent.

1. This suit was brought by Plaintiff to recover from Defendant rupees 24 principal and equal interest due on a bond executed by Defendant in favour of Plaintiff's deceased grandfather Narna Bhut.

2. The Defendant did not answer.

3. The Moonsiff of Coompta decreed that Defendant should pay to Plaintiff principal rupees 12-0-0, with interest from date of plaint to date of decree rupees 3-12 0 on the grounds that the 1st and 2d witnesses prove Plaintiff to be the heir of the deceased Narna Bhut; that the plaint bond is proved to have been executed by Defendant in favor of Plaintiff's grandfather by the evidence of the 3d, 4th and 5th witnesses; that the writer and one of the attestors of the bond are dead, but that the writing and attesta-

tion are proved by the 4th and 5th witnesses ; that the promises of payment held out by Defendant have also been proved by the 1st and 2d witnesses, and that interest previous to institution of suit cannot be allowed because Plaintiff has too long neglected to bring this suit.

4. Plaintiff appeals on the grounds ;

1st. That the 1st and 2d witnesses have proved the promises of payment held out by Defendant ;

2d. The Defendant has acknowledged the justice of the demand for principal and interest from date of bond by not coming forward to defend the suit ;

3d. That the bond stipulates for interest ;

4th. That it was incumbent on the Defendant to see that no time was lost in paying the amount.

5. That under these circumstances the disallowal of interest was not just.

6. Plaintiff therefore prays that the interest and costs disallowed may be awarded to him.

JUDGMENT.

7. The bond sued on was executed by Defendant for cash received and expressly stipulated that the amount was to be repaid with legal interest. The delay in the institution of the suit, is sufficiently accounted for by the death of the executee and by the circumstance of Plaintiff having been only sixteen or seventeen years of age when he succeeded to his grandfather's property, as also by the promises of payment held out by Defendant, to which there is satisfactory evidence in the case.

8. The decree of the Lower Court is therefore amended and the interest claimed allowed with all costs of suit.

THE 20TH JANUARY 1857.

No. 84 of 1855.

Appeal from the decision of Meer Mooneer Ally Saib, Acting Moofty Sudr Ameen, dated 22d February 1855.

Vencut Soobba Hegade, (Plaintiff,) Appellant.

Narayna, (Defendant,) Respondent.

1. The original suit was brought by Plaintiff to recover from Defendant balance of principal and interest rupees 58-0-0, due on a bond, with further interest to date of payment. Plaintiff stated that this transaction took place between the fathers of the parties on the 15th May 1823, and that some head of cattle were pledged as security for the payment of the debt, and that interest was paid by Defendant for eight years.

2. The Defendant did not answer.

3. The Acting Moofty Sudr Ameen relieved the Defendant from liability to the claim, and decreed that the cattle mortgaged, if forthcoming, should be liable for the payment of the amount claimed, rupees 58, and further interest from date of plaint to date of decree.

4. The Plaintiff appeals and urges;

1st. That the bond stipulates that in the event of any cattle being unserviceable, they should be replaced by the mortgager;

2d. That Defendant has inherited property in land &c. from his father, and that to this there is proof;

3d. That Defendant lives within a few miles of the Court, and yet did not defend the suit; and that under the circumstances of the case, the Sudr Ameen was not justified in exempting the Defendant from liability for the claim.

JUDGMENT.

5. The Court sees no sufficient reason for relieving Defendant from liability to the claim raised against him.

6. The cattle pledged in the bond were left in the posses-

sion of Defendant's father, and Defendant has, by the death of his father, succeeded to this as well as to other property. This fact is sufficiently proved by the evidence of the witnesses examined by Plaintiff, one of whom is a near relative of the Defendant. The Defendant, moreover, is shewn by the proceedings to have been in the village when the case was proceeding against him in the Lower Court; but he then took no exceptions whatever to the claim. Under these circumstances, the Court amends the decree of the Lower Court, and decrees that the Defendant do pay to Plaintiff the amount awarded in the original decree, together with all costs of suit, out of the property inherited by him (Defendant) from his father.

THE 20TH JANUARY 1857.

No. 243 of 1855.

Appeal from the decision of Ganapaya, Sudr. Ameen of Sircy, dated 24th August 1855.

Bashetty, (Defendant,) Appellant.

Chenna Bussapa, (Plaintiff,) Respondent.

1. The Plaintiff sued to recover from Defendant rupees 15-10-9, viz. rupees 11-10-9, price of arecanuts purchased by Defendant from Plaintiff, and rupees 4 interest thereon.

2. The Defendant, in his examination before the District Moonsiff of Bilghy, denied the claim in toto, but allowed the case to be tried exparte, after the case was referred to the Sudr Ameen of Sircy.

3. The Sudr Ameen of Sircy considered the claim proved by the evidence adduced, and awarded to Plaintiff the amount sued for, with further interest and costs of suit.

4. The Defendant in his appeal petition urges;

1st. That the village Moonsiff's decree, Exhibit *A* filed by Plaintiff, shews that the price of the arecanuts in question having been satisfied (by part of the amount, rupees 22½, deposited by him (Defendant) with Plaintiff), a balance of rupees 10 in Defendant's favor stood against Plaintiff;

2d. That the Plaintiff, in his defence in the suit before the village Moonsiff, alleged that this claim was brought by him for

balance price of the arecanuts supplied ; whereas in the plaint of this suit, he claims rupees 11-10-9, as the full price due to him for the arecanuts supplied ;

3d. That the Sudr Ameen was not justified in taking exceptions to the village Moonsiff's decision.

5. The Plaintiff has answered in support of the original decree.

JUDGMENT.

6. The fact of Defendant having purchased the arecanuts in question from Plaintiff is proved by the Defendant's admission before the village Moonsiff of Condly. In the plaint presented by Defendant before the said village Moonsiff, he fully admitted the purchase of the arecanuts, but alleged that the value of the nuts being credited in a sum of rupees 22-12-0, deposited by him with Plaintiff, there was a balance of rupees 10 in his favour. The proceedings held by the village Moonsiff of Condly were illegal and beyond his jurisdiction.

7. The Plaintiff's Vakeel, in his deposition before the Sudr Ameen stated that the sum of rupees 22 and odd, above alluded to, was paid by Defendant in part liquidation of rupees 30, which stood against Defendant on account of previous dealings, and that the balance due on those dealings (rupees 7-8-0) was recovered by him (Plaintiff) by an action before the village Moonsiff of Siddapoor. The Defendant admitted before the District Moonsiff of Bilghy, that he had been sued as stated, and that he had paid the amount of the said decree to Plaintiff.

8. For the above reasons, the decree of the Lower Court is affirmed with costs.

THE 22D JANUARY 1857.

No. 198 of 1855.

Appeal from the decision of Appaya, District Moonsiff of Coompta, dated 7th September 1855.

Kesha Hegaday, (1st Defendant,) Appellant.

Ramchendrapoy, (Plaintiff,) Respondent.

1. The original suit was brought by Plaintiff to recover from Defendants rupees 248 principal and interest due on a bond executed by 1st Defendant in favor of Plaintiff's deceased father, for 31 hoons, balance found against the 1st Defendant upon an adjustment of accounts.

2. The 1st Defendant answered that he had received no money from Plaintiff's father; that he had executed the bond sued on in order to "threaten" his brothers, who were on bad terms with him, and that he had obtained a karar from Plaintiff's father to that effect.

3. The 2d Defendant did not answer.

4. The District Moonsiff of Cundapore gave judgment against 1st Defendant alone, adjudging him to pay to Plaintiff the principal and interest claimed rupees 248, on the ground that Plaintiff was proved to have succeeded his father in whose favor the plaint bond had been executed, and that this bond as well as the promises of payment on the part of 1st Defendant had been established; that 1st Defendant had not even attempted to prove his defence; that there was nothing to shew that 2d Defendant was in any way liable for the debt in question.

5. The 1st Defendant appeals, and after reiterating his original defence, he maintains that the witnesses for Plaintiff are his relatives and dependants, and that their evidence is unsatisfactory.

ii. That promises of payment were never made, nor have any been proved to have been made;

iii. That it has not been proved that the bond was executed upon receipt of ready money;

iv. That the karar obtained by the 1st Defendant from Plaintiff's father to say that 1st Defendant had executed the

plaint bond merely to "threaten" his brothers, is in possession of 2d Defendant, who is absent elsewhere;

v. Appellant offers to produce this karar immediately upon the 2d Defendant's return and prove it, or to take oath to the truth of his defence.

JUDGMENT.

6. The bond sued on purports to have been executed by 1st Defendant for hoons 31, which appeared as balance against him on an adjustment of accounts connected with sums borrowed by him for the payment of assessment and other purposes. The execution of the bond is proved by the evidence of witnesses 1 to 3. One of these witnesses is related to 1st Defendant. The 4th and 5th witnesses have given evidence to promises of payment held out by 1st Defendant.

7. The 1st Defendant's plea that the bond was executed to frighten his brothers is absurd. Defendant was required by the Moonsiff to produce the counter deed alleged to have been obtained by him (Defendant) from Plaintiff's father, but he has failed to do so. He has also failed to produce the document before the Civil Court, although this case has been pending for upwards of one year.

8. The 1st Defendant stated that the document above alluded to was in the possession of 2d Defendant, but that this Defendant is absent he (1st Defendant) does not know where. This statement is evidently made for the purpose of gaining time, and cannot be admitted by the Court as a reason for postponing the decision of the case.

9. The decree of the Lower Court is, for the above reasons, affirmed with costs.

THE 27TH JANUARY 1857.

No. 82 of 1855.

Appeal from the decision of Meer Mooneer Ally Saib, Acting Moofty Sudr Ameen, dated 23d January 1855.

Bhascar Narain Joissy, (Plaintiff,) Appellant.

Kristna Bhundary, (Defendant,) Respondent.

1. The Plaintiff sued to recover from Defendant rupees 83-9-3, being principal and interest due on dealings.

2. The Defendant denied the claim in toto.

3. The Acting Moofty Sudr Ameen dismissed the claim with costs, observing that the accounts produced by Plaintiff in support of his claim were unsatisfactory and could not be relied upon, unsupported as they are by other evidence, and that the witnesses called by Plaintiff merely spoke to an offer of compromise having been made to Plaintiff by Defendant subsequently to the institution of this suit, and even in this respect their statements were contradictory.

4. The Plaintiff appeals and urges;

i. That he has filed his regularly kept mercantile accounts in support of his claim;

ii. That the fact of Defendant having previously to putting in his defence offered to compromise the suit, is proved by the testimony of respectable witnesses;

iii. That it is not usual with Sowcars like Plaintiff to obtain the signatures of any individuals in their mercantile accounts;

iv. That he was not directed by the Lower Court to prove the authenticity of his accounts.

5. The Defendant has answered maintaining the correctness of the original decree.

JUDGMENT.

6. Plaintiff claims from Defendant rupees 56 and odd as due to him on dealings alleged to have been carried on between him and Defendant in the years 1845, 1846 and 1847; but there is no evidence whatever on the record to shew that the Defendant received the articles alluded to from Plaintiff, or that he ever

acknowledged the balance in favor of Plaintiff. The evidence of 1st, 2d and 3d witnesses examined by Plaintiff is of no value, and the statements made by the witnesses are highly improbable. It is also extremely improbable that Defendant should have, after the institution of the suit, gone to the Plaintiff's house and made an offer to pay Plaintiff rupees 50 in settlement of his claim. The total amount claimed was only rupees 56 and it is very unlikely that Defendant in offering to compromise the matter would have asked Plaintiff for a remission of rupees 6 only out of rupees 56.

7. The accounts produced in the case do not contain the Defendant's acknowledgment of their correctness, and they cannot, entirely unsupported as they are by other evidence, be received as a proof of the correctness of the claim.

8. The Plaintiff moreover declined to swear before the Lower Court to the truth of his claim and to the correctness of the above accounts.

9. The decree of the Lower Court is for the above reasons affirmed with costs.

THE 29TH JANUARY 1857.

No. 67 of 1855.

Appeal from the decision of Ganapaya, Sudr Ameen of Sircy, dated 27th March 1855.

1. Hunooma Naick,
2. Deva Naick,
3. Chullah,

} (Defendants,) Appellants.

Busha Naick, (Plaintiff,) Respondent.

1. This suit was brought by Plaintiff to recover from Defendants a share in the ancestral property valued at rupees 744-8-0.

2. The Defendants 1 to 3 admitted the claim.

3. The Defendants 4 to 6 in answer pleaded that Plaintiff had relinquished his claim to a share in the ancestral property. They also denied that there existed property to the extent stated by Plaintiff.

4. The Sudr Ameen of Sircy decreed that Defendants should put Plaintiff in possession of a land annually valued at 6 hoons and a moiety of the house valued at 72 rupees and of a bandy valued at 50 rupees and mesne profits from date of plaint to date of decree rupees 48.

5. Three of the Defendants 4, 5 and 6 appeal on the following grounds;

i. That Plaintiff's bringing an action after long separation and after actual relinquishment of right, is opposed to the Hindoo law, and that they would have proved the fact of relinquishment, if they had been called upon to do so;

ii. That they did not know that their Vakeel had thrown out the vakalutnamah;

iii. That at the time when the 4th Defendant was required by the Sudr Ameen to defend the suit in person, he was in distress, being pressed to satisfy certain judgment debt, and the 5th and 6th Defendants were absent from their village, and that they were thus prevented from carrying on the necessary proceedings in their behalf;

iv. That the deposition given by Plaintiff before the Lower Court shews his claim to be unfounded;

v. That the evidence of the Plaintiff's witnesses is contradictory;

vi. That their Vakeel threw out the vakalutnamah without any cause notwithstanding that they had furnished him with every information about the case and also paid him his fees as well as some money to defray the legal expenses on their behalf;

vii. They therefore pray that a fresh decision may be given in the case, upon receiving from them proof in support of their pleas.

JUDGMENT.

6. The relationship claimed by Plaintiff and his right to a share in the family property are fully admitted by 1st, 2d and 3d Defendants who are as much interested as the 4th, 5th and 6th Defendants in opposing the Plaintiff's claim.

7. The plea urged by the 4th, 5th and 6th Defendants that Plaintiff some time ago relinquished his rights in the property, in consequence of its being burdened with debt, is contravened by the 1st, 2d and 3d Defendants' admission of the claim.

8. The 4th, 5th and 6th Defendants had urged the above plea in their defence in the original suit, but they failed to proceed further in their defence, although they were twice served with processes by the Lower Court.

9. The Sudr Ameen, moreover, allowed the 4th Defendant an opportunity to conduct his proceedings in the case, when he (Defendant) attended in another matter before the said officer. At this time the examination of the Plaintiff's witnesses was about to be commenced, but the Defendant said he had no proceedings to carry on in the suit.

10. It does not appear from the pleadings of the 4th, 5th and 6th Defendants that any documentary proof is forthcoming to the alleged relinquishment of his rights by the Plaintiff, and oral evidence to such a point is, under the circumstances of the case, of no value.

11. For the above reasons, the decree of the Lower Court is affirmed with costs.

THE 31ST JANUARY 1857.

No. 195 of 1855.

Appeal from the decision of Mr. G. N. Smith, District Moonsiff of Sircy, dated 13th September 1855.

Sunnappa, (2d Defendant,) Appellant.

Poottaya Hegade, (Plaintiff,) Respondent.

1. The Plaintiff sued to have a land, annually valued at 42 rupees, registered in his name. The plaint states that 2d Defendant and his brother Badappa sold the land to Plaintiff's uncle Timmaya; that accordingly Timmaya held the land; that after his death it devolved upon Plaintiff; that in the meantime 1st Defendant obtained a decree against 2d Defendant and caused the said land to be attached, in satisfaction of the decree obtained by him; that Plaintiff preferred his right of purchase, but that as the Defendants denied the purchase, Plaintiff was referred to a civil action.

2. The Defendants in their answers denied the purchase right claimed by Plaintiff and maintained that he merely held a mortgage on the land.

3. The District Moonsiff of Sircy, Mr. G. N. Smith, decreed that the land should be released from attachment, and that it should be registered in the Plaintiff's name, 2d Defendant paying Plaintiff's costs, on the grounds that the deed of sale *B*, although liable to suspicion, was yet to be held genuine from the circumstance that the 2d Defendant in his deposition *E*, admitted not only that the land was sold to Plaintiff's uncle, but also that it was made over to him; that the fact that 2d Defendant rented the land from Plaintiff's uncle and paid rent to him though not sufficiently proved by evidence, was established by the 2d Defendant's admission combined with the evidence adduced to the point; that from these circumstances it might be concluded that the sale really did take place; that the land was made over to Plaintiff's uncle; that he had it cultivated in 1251 fusly and that it has been in his possession from that time; that it appears from the book produced by 12th witness that in June fusly 1250 a ranzeenamah and caboolnamah were put in, but that no proceedings were held upon them owing to the objections raised by the 2d Defendant's elder and younger brothers; that 2d Defendant does not appear to have raised any objections, and that the circumstance that the deed of sale is not on a stamp paper cannot affect the Plaintiff's claim.

4. The 2d Defendant appeals on the grounds;

i. That the deed of sale, upon which the Moonsiff has based his judgment in favor of Plaintiff, is pronounced by the Moonsiff to be suspicious, and that Plaintiff has failed to prove it;

ii. That if the deed of sale had been genuine, the Plaintiff would not have allowed 20 years to elapse before he took any steps to have the registry of the land altered to his name, or till the land was attached; that the deed of sale has not been drawn upon stamp paper;

iii. That two of the witnesses to deed of sale are dead;

iv. That the witness called to prove the writing of one of the witnesses has contradicted himself; inasmuch as he stated that the writing resembled his father's, which writing he had stated in his first examination to be different from his father's;

v. That the evidence of the 8th and 9th witnesses has been rejected by the Moonsiff;

vi. That it was irregular to have examined the 10th and 11th witnesses to the exhibit *C* fabricated by Plaintiff;

vii. That the land was made over to Plaintiff's uncle, to be held by him for a certain time, in satisfaction of the amount borrowed from him upon the pledge of that land;

viii. That although the amount was satisfied by the usufruct of the land, the deed of mortgage was not returned;

ix. That Plaintiff taking advantage of his being in possession of the land has fabricated the exhibit *B*;

x. That if the exhibit *B* had been genuine, it would have been mentioned in the public accounts;

xi. That the deposition *E* was not given by Appellant (2d Defendant); that it has been got up by Plaintiff with the assistance of the monegar in order to bear out his claim;

xii. That 2d Defendant had complained of Plaintiff's endeavours to appropriate the land and that the fact of his having so complained is in contravention of exhibit *E*;

xiii. That 2d Defendant being an illiterate man, Plaintiff has, with the assistance of the revenue servants, fabricated the deed *B*, the deposition *E*, and some other documents, and that these documents bear internal evidence of their having been so fabricated;

xiv. That this suit having been brought 20 years after the date of the deed *B*, it ought to have been dismissed under regulation 2 of 1802.

JUDGMENT.

5. The Court on consideration of the documents and evidence in this case, does not coincide in the decision of the Lower Court.

6. The deed of sale *B*, on which the Plaintiff claims the purchase right to the land in question, is a very suspicious document. This deed is drawn up on plain paper and purports to have been executed by 2d Defendant and his elder brother Badappa; to have been written by one Mahadevappa and attested by Hucre Devappa Hegade and Ooda Timaya. The writer Mahadevappa and one of the attesting witnesses Hucre Devappa Hegady are dead, and Mahadevappa's son the 2d witness stated, that he could not positively identify the handwriting of the deed as that of his deceased father. The surviving witness Ooda Timmaya denied having attested the document. This denial is attributed by the Moonsiff to this witness being related to 1st Defendant, but the Civil Judge observes that the witness is related nearly in the same degree both to 1st Defendant and to Plaintiff.

7. The Court moreover observes on inspection of the document *B*, that the mark of Baddapa and the stipulation to renew the deed on stamp paper are interpolations made between 2d Defendant's mark and the attestations of the witnesses.

8.] The District Moonsiff in his decree observes that the deed is very suspicious, but he passes over the suspicions, on the ground that the sale was admitted by the 2d Defendant in his deposition *E*, before a monegar in 1250 fusly.

9. The Court however observes that the statements alleged to have been made in this deposition by the 2d Defendant are entirely at variance with the complaint said to have been made by him on that occasion. This deposition and the report made thereon by the then Tahsildar Balakrisht Row did not result in any order of the Revenue Authorities, but were placed among the records as requiring no order. There is nothing to shew that the deed of sale *B*, was brought forward during this investigation.

10. The sale in question was not regularly represented to the Revenue Authorities. The rauzeenamah produced by the 12th witness does not bear the initials of the Tahsildar, nor has it been entered in the book in which rauzeenamahs regularly represented are invariably registered.

11. The sale, moreover, is not mentioned in the revenue accounts, while the registry of the land still remains in the name of the 2d Defendant's father, and ten years after the date of the deed of sale, viz. in fusly 1250 and 1252 the land was entered in the pahanee or inspection accounts of the Revenue Authorities as the freehold of the 2d Defendant and his brother Baddappa, and as cultivated by Plaintiff and his uncle for 2d Defendant and his brother.

12. The Plaintiff holds a mortgage of hoons 24½ on the land in question and this mortgage bond exhibit *A*, is regularly drawn up on stamp paper. It is therefore extremely improbable that the Plaintiff's uncle should have obtained the deed of sale which was drawn up for a larger amount, viz. hoons 36 and odd; on plain paper when a stamp paper could have been easily procured.

Moreover, the deed of sale *B*, contains a stipulation that it was to be renewed on stamped paper when a stamp could be had. There is nothing to shew why this condition was not fulfilled.

For the above reasons, the Court rejects the deed of sale *B*, as very suspicious, and being of opinion that Plaintiff holds possession of the land as mortgagee (under the circumstances stated by 2d Defendant) the Court reverses the original decree, and dismisses the Plaintiff's claim with costs in original and appeal.

THE 31ST JANUARY 1857.

No. 235 of 1855.

Appeal from the decision of Mr. G. N. Smith, late District Moonsiff of Sircy, dated 29th September 1855.

Sunnuppa, (Plaintiff,) Appellant.

1. Poottaya,
2. Keshupa,
3. Soobbaya,
4. Narnapah,

(Defendants,) Respondents.

1. The Plaintiff sued to recover from Defendants a land producing rupees 60 per annum, with mesne profits and interest rupees 147-7-6. He stated that the land in question was in Vicrootoo (1830) mortgaged on simple terms by himself and his deceased elder brother for hoons 20 to 2d Defendant's father Timmaya Hegade; that they held the land in their own possession up to Sharwary (1840) paying interest on the mortgage amount, and then made it over to the mortgagee for a term of 8 years on a verbal agreement that the mortgagee should pay the Circar assessment on the land, and apply the remaining produce to the liquidation of the mortgage amount, and that on the expiration of the said term, he should restore the land together with the mortgage bond; that the mortgagee having since died, Plaintiff on the expiration of the term, demanded restoration of the land, from his nephew the 1st Defendant who managed his household affairs, but the 1st Defendant refused to restore the land, falsely alleging that it was sold to his deceased uncle the said Timmaya Hegade; that this land having subsequently been attached by Court in satisfaction of decree in Original Suit No. 201 of 1847 obtained against Plaintiff by one Narnapa Hegade. The 1st Defendant presented a petition claiming the land by purchase right, but being referred to a regular action, has instituted against Plaintiff and others Original Suit No. 123 of 1853 to establish the purchase right.

2. The 1st Defendant in answer pleaded that he had been holding the land in question in virtue of a deed of sale dated 3d Ashad Shoodh of Kara (12th July 1831) executed by Plaintiff and his elder brother in favor of 1st Defendant's ancestor Timmaya Hegade.

3. The late District Moonsiff of Sircy dismissed the Plaintiff's claim with costs for the reasons stated by him in his decree in Original Suit No. 123 of 1853.

4. The Plaintiff appeals, and refers to his Appeal No. 195 of 1855 for the grounds of this appeal.

JUDGMENT.

5. The Court for the reasons recorded in the decree Appeal Suit No. 195 of 1855 rejects the purchase right claimed by the 1st and 2d Defendants to the land in question. The Defendants having enjoyed the usufruct of the land up to this period, the Court is of opinion that this usufruct has compensated them for the annual interest due on the mortgage amount.

6. The original decree is therefore reversed, and it is hereby decreed that Defendants do give up the land sued for to Plaintiff on receiving from him the principal of the mortgage rupees 98. Parties to pay their respective costs of suit.

ZILLAH MADURA.

PRESENT: A. W. PHILLIPS, ESQ., ACTING CIVIL JUDGE.

THE 14TH JANUARY 1857.

Appeal Suit No. 105 of 1856.

Appeal from the decision of Sreenevassa Row, 2d Class District Moonsiff Shevagunga, dated 26th April 1856.

1. Bungaroo Teroomalay Naick,
2. Visavanada Naick, and
3. Coomara Kistnapa Naick,

} Appellants, (Defendants.)

1. Moottoosawmy Pillay, and
2. Auroomoogum Pillay,

} Respondents, (Plaintiffs.)

1. The original suit was instituted to recover rupees 386, principal and equal interest due on a verbal agreement.

2. Plaint sets forth that Plaintiffs borrowed 200 rupees of one Lutchoomepathy Naick and lent it to Defendants and a payment of 7 rupees was then and there made towards the liquidation; a settlement of account took place in March 1844 when a sum of 193 rupees were found by Defendants who verbally promised payment in a month from that time, but failing so to do this suit was brought.

3. Defendants deny the plaint and allege that had the Plaintiffs really lent the money they would have obtained a document either then or when settlement is alleged to have been made; the bond obtained by Lutchoomepathy Naick is dated 14th Octoher 1842, and if the money borrowed thereunder had been lent to Defendants on that date, this suit is barred by the law of limitation; no adjustment as alleged ever took place.

4. Plaintiffs filed three documents one of which is an attested copy of a bond executed by Plaintiffs to Lutchoomepathy Naick for rupees 200 wherein it is mentioned that that amount was borrowed on account of the Defendants.

5. The Moonsiff on consideration of the evidence adduced observed that the bond obtained by Lutchoomepathy Naick and the plaint filed by him proved the Plaintiffs having lent the 200 rupees to Defendants; that the Plaintiff's 1st, 2d and 3d witnesses proved the same and the part payment of 7 rupees by Defendants; that the settlement of accounts was not proved but demand was, and that the failure on the part of the Defendants to appear and represent whether or not they were willing to have the case settled on oath, tells much against their defence and accordingly awarded the claim to Plaintiffs with costs.

6. Against the above award the Defendants appeal and urge;

1st. That although the Plaintiff's 1st and 3d witnesses have falsely deposed that 200 rupees were lent in 1842; but putting that aside the period between that and the filing of suit when calculated exceeds 12 years and the Moonsiff admits the settlement of accounts in 1844 has not been proved;

2d. That the evidence of Plaintiffs' witnesses of whom 2d is 2d Plaintiff's brother-in-law and the 3d the 1st Plaintiff's brother is attended with contradictions;

3d. That the Document *A* provides that 48 rupees as interest for 4 months on 200 rupees borrowed of Lutchoomepathy Naick was agreed to be paid whereas the Plaintiffs' witnesses depose that the same amount was lent to Defendants on verbal agreement on interest at 1 rupee per cent;

4th. That Appellants being descendants of the Carnatic Rajahs, their Vakeel represented it would be a disgrace to them to take oath, and for that reason they declined;

5th. That Lutchoomepathy Naik, the Plaintiffs' 5th witness denied that the money had been lent to Defendants.

7. Respondents in answer allege that the fact of the loan having been made and the demand have been satisfactorily established; that 5th witness' daughter being given in marriage to 2d Appellant, he has given false evidence, and prays for confirmation of original decree.

JUDGMENT.

8. The loan which forms the subject of discussion in this

case as well as the payment of 7 rupees are admitted by Plaintiffs to have been made so far as 1842, and though it is alleged that a settlement took place relating to the same 2 years afterwards, it has as the District Moonsiff observes never been proved, consequently as pleaded in the appeal petition this suit is barred by the law of limitation and the claim on those grounds should have been dismissed, but putting such grounds aside altogether, the claim which is merely on a verbal agreement has been very insufficiently proved, and passing over several contradictions in the evidence of Plaintiffs' witnesses, it is improbable that the Plaintiffs would have borrowed money of a third party to lend to the Defendants and still less probable is it that they (Plaintiffs) should have borrowed giving a bond in due form for what they borrowed without requiring an acknowledgment of any kind from the Defendants, while to crown all the rate of interest Plaintiffs were to pay according to the bond considerably exceeded that which they were to receive from the Defendants to the according allegations of Plaintiff's own witnesses who moreover are more or less related to them. The original decree, under all these circumstances, is reversed, and Plaintiffs will bear all costs in original and appeal.

THE 16TH JANUARY 1857.

Appeal Suit No. 25 of 1856.

Appeal from the decision of Mr. W. Haslam, Acting 2d Class District Moonsiff of Paramagoody, dated 15th November 1855.

1. Rauck Ummaul, } (Plaintiffs,) Respondents.
2. Velly Ummaul, }

1. Caroopana Taven, } (1st and 3d Defendants,) Appellants.
2. Cantoo Taven, }

1. The original suit was instituted to recover 14 cowroocums of poonjah and 1 and odd collums seed of nunjah land yielding annually rupees 30-10-0 and damages rupees 91-14-0.

2. Plaint sets forth that 1st Plaintiff's husband and Defendants 1 to 4 are divided diahdas, and that the lands in dispute are the ancestral property of the 1st Plaintiff's husband who dying left by a will executed on 7th September 1851 one half of his estate including the disputed land to 1st Plaintiff and her daughter, the 2d Plaintiff and the other half to his 2d wife and her daughter

but the Defendants having taken illegal possession of the disputed lands, this suit for their recovery as also for damages is brought.

3. The Defendants 1 to 8 deny the plaint and state that the father of 1st Plaintiff's husband and the Defendants 1 to 4 are undivided cousins; that on account of certain altercations which arose in the family the 1st Plaintiff's husband and 1st Defendant's grandfather lived separately but enjoyed the lands in common; that after the death of her husband the 1st Plaintiff and her husband's second wife Chinna Ummaul as settled by mediators executed an agreement to the father of the 1st and 2d Defendants and others agreeing to take in lieu of their maintenance half of their husband's property and make over the other half to the Defendants. Accordingly the Defendants took possession of the deceased's property and the Plaintiffs have brought this suit through enmity.

4. The Acting Moonsiff upon consideration of the records observed that it has been clearly established that a division took place in the family 60 years back; that the lands in dispute were enjoyed by the father of 1st Plaintiff's husband and by the husband himself exclusively, and he left a will entitling both his wives to an equal share of his estate, and accordingly awarded to Plaintiffs the lands, and adjudged the Defendants 1 to 4 to pay the damages claimed and costs of suit exonerating the other Defendants from any liability.

5. Against the above award the 1st and 3d Defendants appeal on the following grounds;

1st. That the witnesses for Plaintiffs are their relatives and men of mean professions;

2d. That an agreement which was very material to their defence was not on the record, and the Moonsiff failed to procure the attendance of a gomastah in the Zemindar's cutcherry, where that document was produced with it which the Defendants now request may be procured and a decree passed.

6. 1st Plaintiff answered upholding justness of the original decree and praying for its confirmation with reference to the records in this case and in Appeal Suit No. 26 of 1856.

JUDGMENT.

7. The reasons put forth in this appeal petition are frivolous and almost unworthy of any notice. Out of 14 witnesses cited by the Defendants not one was forthcoming and the District Moonsiff very properly pronounced an exparte decision. It may be

true that Plaintiffs' witnesses are their relatives, but they are for that very reason all the more likely to know the facts to prove which they were cited, and as they all depose hearing of a division having taken place between the ancestors of the Plaintiffs and the Defendants many years ago, and to 1st Plaintiff's husband inheriting the lands in dispute from his father, and to his leaving all his property by will at his decease (which will is produced) to be equally divided between his two wives, and to the land in dispute falling to the lot of the 1st wife (that 1st Plaintiff in this case); while there is nothing brought forward to refute the statements, the Court feels bound to believe them and considering that in the absence of other evidence and especially any reasons to account for the Plaintiff entering into an agreement so suicidal, when both by her position as wife and by will she was in actual possession of the property, the production of the agreement referred to would result in nothing, declines to send for it, and dismissing the appeal with all costs confirms the original decree.

THE 16TH JANUARY 1857.

Appeal Suit No. 26 of 1856.

Appeal from the decision of Mr. W. Haslam, Acting 2d Class District Moonsiff of Paramagoody, dated 15th November 1855.

1. Odiar Taven,
2. Caroopana Taven,
3. Cunda Taven,
4. Chinnatumby Taven,

(Plaintiffs,) Appellants.

1. Rauckummaul,
2. Chinnummaul,
3. Peria Curpa Taven,
4. Oodea Taven,
5. Moottoocarooppana Taven,
6. Chinnacarooppana Taven,
7. Sungara Taven,
8. Allagur Taven,
9. Carooppana Taven,
10. Auroomooga Taven,
11. Cooria Taven,
12. Oodia Taven,
13. Alagaree,

(Defendants,) Respondents.

1. The original suit was instituted to recover 3½ coolies of poonjah land together with certain trees, and rupees 84-11-6, being

a moiety of mortgage amount, and value of sheep, as also to obtain an award directing Plaintiffs to enjoy half of the emoluments of certain tamarind trees.

2. The plaint states that 1st and 4th Plaintiffs and 3d Plaintiff's father were brothers, their father Coomarasawmy Taven and Peria Taven the father of the 1st and 2d Defendants' husband, Alungara Catta Taven, were undivided brothers. They and after them the Plaintiffs and the husband of 1st and 2d Defendants lived without division but separately, and on the 26th September 1851 Alungara Catta Taven died leaving his widows the 1st and 2d Defendants and 2 daughters. The Plaintiffs being his heirs-at-law desired the 1st and 2d Defendants to deliver to them all the deceased estate and place themselves under the protection of the Plaintiffs, but they refusing to do it both parties had recourse to a certain punchayet who decided that a moiety of the deceased's property be taken by the 1st and 2d Defendants for their maintenance, and the other moiety be given to Plaintiffs, and that Plaintiffs themselves shall enjoy a certain merassy ; both parties acquiesced in this award and agreements executed with each other, a part of the property was accordingly made over to Plaintiffs, and the other part the 1st, 2d Defendants conspiring with the other Defendants, refused to deliver, and therefore the Plaintiffs bring this suit.

3. The Defendants, 2d and 11th excepted, in their answer deny the plaint and assert that a division had taken place between Coomarasamy and the father of the 1st and 2d Defendants' husband on the 20th August 1796 under deeds. This division is supported by the fact of separate puttahs having been issued in the names of 1st and 4th Plaintiffs and their father, as well as the 3d Plaintiff, and the 1st and 2d Defendants' husband for their respective shares of land. The husband of the 1st and 2d Defendants had also left a will making provision as to how his estate is to be divided between his widows, and the 1st and 2d Defendants did neither execute any agreement nor make over any property to Plaintiffs, and the Defendants in fine attribute this suit as a counter to the one brought by 1st Defendant in No. 124 of 1854.

4. The Acting Moonsiff on consideration of the records in this case and in Suit No. 124 of 1854 found that the parties were divided and that the claim is untenable, and accordingly dismissed the suit with all costs against Plaintiff.

5. Against the above award the Plaintiffs appeal and urge ;

1st. That the family is undivided and that an agreement was executed, has been clearly proved ;

2d. That the observation of the Moonsiff as though the disputed lands were the self-acquired property of the 1st Defendant's husband, is opposed to the statement of the 1st Defendant;

3d. That the Plaintiffs have produced in the office of the Zemindar in a certain dispute about merassy the disputed agreement and obtained a favorable result, and although Plaintiffs have named the Zemindar's gomastah who has charge of the document as a witness and a summons was duly served, his attendance was not procured, and before the document was produced after the return of the manager who was then under trial for a certain offence, and the Plaintiffs therefore pray to procure for them in this appeal the above document, and render justice.

6. The 1st and 5th Defendants refute the statements made in the appeal petition and pray for confirmation of the original decree with reference to the records in this case and in Appeal Suit No. 25 of 1856.

JUDGMENT.

7. The Court has considered the grounds of appeal and finds that the 1st regarding the division has already been decided in Original Suit No. 124 of 1854 before the Paramagoody Moonsiff, and confirmed in appeal, while it entirely fails to see that the fact of an agreement having been executed by the Defendants has been proved at all; on the contrary no such agreement has ever been produced and even if it had, it appears from the Plaintiff's own shewing to have been one executed before a tribunal not constituted as required by Regulation IV of 1816, for the members were not the inhabitants of the village and convened by the Moonsiff, but parties who had assembled from various parts to conduct the funeral ceremonies of the deceased and for whom it was very easy to say what they have and to attach marks to an agreement certifying them to be those of the Defendants, and as moreover Defendants were not only the legal heiresses of the deceased, but had their claims to his property still further strengthened by a will executed in their favor, there appears to have been no reason for their executing such agreement, and as the Court would discredit the validity of such document even if it were forthcoming sees no reason for causing its production. Appeal is therefore dismissed with all costs and original decree confirmed.

THE 21ST JANUARY 1857.

Appeal Suit No. 54 of 1856.

Appeal from the decision of Mr. W. Boalth, Acting 1st Class District Moonsiff of Madura, dated 17th December 1855.

Elundaurymeera Rowten, (Plaintiff,) Respondent.

Teroomalay Umbalacaren, (1st Defendant,) Appellant.

1. The Plaintiff sued the 1st Defendant and his heirs the 2d and 3d Defendants for recovery of rupees 143-6-4 due upon 3 bonds dated severally the 14th November 1848, 3d July 1853 and 30th July 1854, all of which were stated to have been granted by the 1st Defendant upon settlement of accounts.

2. The 1st Defendant denied the claim in toto while the 2d and 3d allowed a judgment to go by default.

3. The Acting Moonsiff gave a decree for the Plaintiff and discredited the counter claim of the Defendants.

4. The 1st Defendant appeals from the decree and avers that a single suit upon several distinct transactions and bonds is inadmissible, and irregular.

5. Respondent in answer avers that under Circular Order of Sudr Udalut dated 28th January 1830 he was justified in suing upon the 3 documents as he has done, and maintains the justness of the original decree.

JUDGMENT.

6. The 1st Defendant is quite justified in appealing from the decree of the Acting District Moonsiff, and his grounds for so doing are undoubtedly good. The 3 bonds sued on were executed at 3 *distinct* periods, and are for 3 *distinct* sums, each forming the subject of a *separate suit*, which the Acting District Moonsiff ought to have been aware of. The Circular Order of the Sudr Udalut dated 28th January 1830, to which Plaintiff in his appeal answer refers the Court in justification of the Moonsiff's decision, by no means bears him out; the Sudr Udalut have certainly ruled therein that a suitor cannot *divide his demand*, and that a plaint must invariably sue for payment of the *entire* sum, which Plaintiff considers himself entitled to demand, but by this is meant that a party cannot sue for a *portion* of a demand with the view

of giving him a virtual claim to the whole, and thereby defrauding Government of a part of the stamp duty to which it would be entitled, and not, that 3 *separate and distinct claims*, though all said to be due from the same party, should be amalgamated into one as appears to have been done in the present case ; the decision passed by the Moonsiff is therefore quashed and Plaintiff adjudged to pay all costs in original and appeal.

THE 23D JANUARY 1857.

Appeal Suit No. 11 of 1856.

Appeal from the decision of Mahomed Lootify Russool Saib, Moofty Sudr Ameen of Madura, dated 17th July 1855.

Moodookistnum Pillay, (Plaintiff,) Respondent,

versus

Iyemperoomaul Pillay, (1st Defendant,) Appellant.

1. This was an action to recover 5 and odd cawnies of nunjah land and to obtain an injunction prohibiting Defendants' interference in the Plaintiff's enjoyment of 26 and odd coolies of poonjah land as well as to recover damages rupees 39-12-6.

2. The plaint sets forth that on the 26th November 1849 the 1st and 2d Defendants sold to the father of the 5th Defendant the disputed lands and a house ground for rupees 376-6-1 under a deed of sale, and that 5th Defendant's father was accordingly enjoying the lands paying kist to the 1st Defendant who was puttah holder, and on his father dying in 1852, the 5th Defendant disposed of the land and house ground to the Plaintiff for rupees 237-0-0 which his father owed him, executing an unstampt deed of sale under date the 3d June 1853, in which month the 1st Defendant verbally engaged to cultivate the nunjah land, and pay mailwarum, but failed to pay the same, and the Defendants 1, 3 and 4 have not only jointly enjoyed it, but also cultivated the lands in 1854, but as no produce has been realized for that year, the Plaintiff claims damages only for 1853.

3. The Defendants were exparte.

4. Plaintiff filed 2 documents one being deed of sale executed by 1st and 2d Defendants to 5th Defendant's father and the other by 5th Defendant's father to the Plaintiff.

5. The Moofty Sudr Ameen on consideration of the records found the deed of sale to have been proved and awarded the land to Plaintiff and observed that Defendants do make over the disputed lands to Plaintiff; that puttahs now in the 1st Defendant's name be transferred to that of the Plaintiff and that damages and costs be paid to Plaintiff by Defendants.

6. Against the above award the 1st Defendant appeals and urges;

1st. That the nunjah land measures more than is stated and the poonjah as 10 and odd coolies instead of 24;

2dly. That the 1st Defendant and his brother the 2d never executed a deed of sale disposing of the lands to the 5th Defendant's father nor did he, the 5th Defendant, or the Plaintiff ever enjoy the same;

3dly. That at the time the sale is alleged to have been made by 1st Defendant, the lands were held under attachment for a precept against the 1st Defendant and subsequently released and are up to the present in his enjoyment;

4thly. That to prove the claim to be a false one, the 1st Defendant possesses several reasons and sufficient proof;

5thly. That had the sale been true, the attestations of the merassidars or inhabitants of the village where the lands lie ought to have been obtained and the Plaintiff and 5th Defendant combining together brought this suit;

6thly. That the 3d and 4th Defendants have no concern in this suit;

7thly. That the 1st Defendant was from sickness prevented from defending the suit in the original.

7. Respondent upholds the justness of the original decree, and refuting the statements made in the appeal petition prays for confirmation of the decree of the Court below.

JUDGMENT.

8. The grounds of appeal in this case are frivolous and vexatious and merely brought forward to delay execution of decree as is apparent from the fact of only one of the Defendants appealing. Had 1st Defendant possessed these proofs of the claim being a false one, he could as easily have produced them in the 1st instance as now and as he could also have employed a Vakeel without any difficulty and at a very small cost between 13th March when no-

tice was served on him and the 17th April when the case was taken up for hearing, and as moreover he appears to have been well enough to present himself before the Court on the 27th March to obtain copy of plaint, the plea of sickness cannot be accepted. The original decree therefore is not only confirmed and this appeal dismissed with costs, but the 1st Defendant for making this vexatious and litigious appeal is fined 15 rupees and in default to be incarcerated till the same is paid under Regulation IV, Section XXXV of 1802.

THE 23D JANUARY 1857.

Appeal Suit No. 34 of 1856.

Appeal from the decision of Mr. W. Haslam, Acting 2d Class District Moonsiff of Paramagoody, dated 6th December 1855.

Coolia Naicken *alias* Veeruppa Naicken, (Plaintiff,) Respondent.

Moottana Taven, (5th Defendant,) Appellant.

1. This is a suit to recover 1 cooly or 6 coorkums of poonjah land yielding an annual produce of rupees 124-3-6 and also rupees 112-8-10 as loss of produce thereof.

2. The plaint states that the land in question was the hereditary property of Plaintiff and was successively enjoyed by his ancestors and himself up to April 1855 when the Defendants and 2 other village merassidars interfered with his cultivation and took forcible possession of the land. Hence this suit.

3. The Defendants in answer deny the plaint and assert that they are the hereditary proprietors of the land in question which was in 1812 mortgaged to Plaintiff's father by their ancestors for 10 poons or rupees 21-3-4 for 20 years' enjoyment. In May 1855, or 43 years after the mortgage, the 5th and 7th Defendants demanded redemption, but as the Plaintiff refused they deposited the mortgage amount with the village umbalagar and took possession of the land. The Defendants are therefore not amenable to the Plaintiff's claim.

4 The Acting District Moonsiff on consideration of the records found the claim to have been satisfactorily proved, and accordingly awarded to Plaintiff the land sued for together with loss of produce, and saddled Defendants with all costs of suit.

5. Against the above judgment, the 5th Defendant appeals and urges as follows;

1st. That his and other Defendants' hereditary right to the land in dispute and the Respondent's long enjoyment thereof is a mere mortgage have been fully borne out by oral and documentary evidence, while he (Respondent) failed to adduce any proof of his ancestral right;

2d. That no long enjoyment as a mortgagee can under Hindoo law confer any right to the land;

3d. That disagreements between all the Defendants were the cause of the delay in seeking the redemption;

4th. That there is no restriction to take counter parts for mortgage deeds;

5th. That the Respondent is entitled to no less since the suit has been brought before 6 months after the alleged usurpation. That therefore the original decree should be reversed on reference to the records.

6. The Respondent in answer upholds the justness and propriety of the original decree, combats the arguments in the appeal by advancing the same grounds fully explained in the original decree, and adding that his ancestral right to, and long enjoyment of, the litigated land as well as the loss claimed, have been satisfactorily established by evidence. Prays for legal confirmation of the said decree.

JUDGMENT.

7. The appeal in this case is groundless and vexatious and evidently made (like too many others that come before the Court) with no other object but that of delaying execution of decree.

8. The possession of the land by the Plaintiffs for a long series of years has been deposed to by no less than 6 witnesses and even the Defendants and their own witnesses do not deny the fact of the land having been enjoyed by the Plaintiffs, for no less a period than 43 years. The assertion that Plaintiffs only held it on mortgage tenure from Defendants' ancestors is unsupported by any satisfactory evidence, and as moreover it is allowed by the Defendants themselves that the mortgage term expired in 1832, between which and the forcible taking possession of the land by the Defendants about 20 years have been allowed to elapse without any steps for its recovery having been taken, the Defendants if their claims had been otherwise ever so good, would have had them rejected under the law of limitation. Under these

circumstances, the Court dismisses the appeal with all costs and confirms the original decree.

THE 23D JANUARY 1857.

Appeal Suit No. 169 of 1856.

Appeal from the decision of Sreenevassa Row, 2d Class District Moonsiff of Shevagunga, dated 28th April 1855.

Varisa Ebrahee Rowthen, (Plaintiff,) Appellant.

1. Soondarem Chetty, and
2. Vellyen Chetty, } (Defendants,) Respondents.

1. Plaintiff sued to recover rupees 112-3-2 principal and interest due on verbal agreement.

2. The plaint sets forth that in Suit No. 100 of 1852, on the file of the late Hindoo Sudr Ameen this Plaintiff and his elder brother were the judgment debtors of the 1st Defendant who was likewise indebted to this Plaintiff and others in Appeal Suit No. 61 of 1852; that when sale precept was issued in the abovesaid No. 100 a verbal compromise was entered into; that Plaintiff and others should pay 1st Defendant rupees 100 in cash besides crediting to the precept the decree amount in No. 61, and that 1st Defendant should receive the balance of precept amount by instalments. Defendants accordingly received the rupees 100, but failed to carry out their part of the agreement. Plaintiff therefore claims the rupees 100 paid in cash.

3. Defendants in answer deny any payment having been made on account of the precept in No. 100, and plead that the rupees 100 were paid on account of private debts.

4. The District Moonsiff discrediting Plaintiff's evidence and on his expressing his willingness to rest satisfied if 2d Defendant subscribed to a solemn affirmation to the effect that the 100 rupees was not paid on account of precept, which affirmation was made, dismissed the claim of Plaintiff with costs.

5. Plaintiff dissatisfied appeals and urges;

1st. That the Moonsiff was not justified in discrediting the oral and documentary evidence adduced;

2d. That Plaintiff would not have paid the 100 rupees on account of a private debt, without crediting it to the precept;

3d. That no mention was made of the private debt in the plaint in No. 100;

4th. That the oath was not taken in the manner prescribed by Plaintiff.

6. The Defendants in appeal answer uphold the justice of the original decree, and pray for its confirmation.

JUDGMENT.

7. The Court is at a loss to see what Plaintiff could possibly expect to get (except a fine imposed on him) from making this appeal; for had the grounds been previously ever so good, he has marred all in the final hearing of the case before the Moonsiff by expressing *his willingness to give* up the claim, if 2d Defendant would declare before the Court on solemn affirmation, that the said amount was not paid on account of the precept; 2d Defendant made the declaration in the usual manner and as required, and Plaintiff was accordingly non-suited. Under such circumstances, and the decision having been rendered final by Plaintiff's own act, the Court cannot but dismiss this appeal with all costs.

ZILLAH MANGALORE.

PRESENT : D. MAYNE, ESQ., ACTING CIVIL JUDGE.

THE 7TH JANUARY 1857.

Appeal Suit No. 19 of 1853.

Before Sudr Ameen Munjappaya ;
Original Suit No 102 of 1850.

Ramuppa Tuntry, Appellant.

1. Maneyumma,
2. Tyampa Chetty,
3. Soobraya Shanbhogue,
4. Soobbannaya,

} Respondents.

The 2d Respondent's Vakeel Santappah.

1. The original suit was instituted to procure possession of certain land of an annual produce of rupees 17-8-0 in occupation of the Defendant without any title to it.

2. The Sudr Ameen non-suited Plaintiff who thereupon appealed setting forth that the title as by him claimed had been established ;

1st. That it is not stated by the Sudr Ameen what was the description of the list of division of property to which he refers ;

2d. That on demise of Appellant's younger brother the 3d Defendant instigated the 1st Defendant (widow of aforesaid decease) to execute a deed of sale in favor of 2d Defendant (tenant of

3d Defendant) without the payment of any money; that 3d Defendant caused the 2d Defendant to institute a suit against the 1st Defendant who filed a deed of compromise on which a decree was passed.

3. The 1st Defendant had no power to sell the property and Plaintiff is willing to have the matter settled by the declaration on oath of either of the parties.

JUDGMENT.

4. The Plaintiff states that he built a house for his mother to live in on the disputed land which was part of his hereditary estate and gave also certain field to his mother.

5. It appears that this land was sold by public auction on 30th April 1839 for assessment due thereon by Plaintiff; that it was bought by one party who subsequently sold it to Plaintiff's father (father-in-law of 1st Defendant) and registered in his name; a portion of this land, was at a late time allotted to Plaintiff and a portion to his younger brother (whose widow is 1st Defendant) and after this deeds of division were executed by the parties in whose enjoyment the respective shares have since been enjoyed, they paying the assessment fixed on the lands.

6. The evidence fully establishes the foregoing facts and proves that in every way the parties have acted as proprietors of the land.

7. There is no reason to disturb the decision of the Lower Court which is hereby affirmed with costs.

THE 8TH JANUARY 1857.

Appeal Suit Nos. 44 and 156 of 1853.

Before the Sudr Ameen Munjappaya ;
Original Suit No 145 of 1851.

Appeal Suit No. 44 of 1853.

Aytoonika, (2d Defendant,) Appellant.

Vakeel Pedro Vas.

Mambeary, Respondent.

Vakeel N. Anantaya.

Appeal Suit No. 156 of 1853.

Oogga Marla, (1st Defendant,) Appellant.

Mambeary, Respondent.

Vakeel N. Anantaya.

1. The original suit was instituted to recover rupees 1,068-5-6, principal and interest claimed on account of a deed of sale dated 19th January 1851.

2. The Sudr Ameen decreed that Defendants should satisfy the Plaintiff's demand with interest and also defray the costs.

3. The 2d Defendant appealed stating that the 1st Defendant being owner of the land sold to Plaintiff for the money claimed by him, he (2d Defendant) was not responsible for the demand as he affixed his name to the deed of sale as a witness only and offering further reasons in defence, prays to be exempted from the claim.

4. The 1st Defendant also appealed in formâ pauperis and the Plaintiff filed his answer to the appeal.

JUDGMENT.

5. The deed of sale is not disputed by the Defendants, but they plead that only rupees 300 of the whole purchase money has been paid by Plaintiff.

6. The Plaintiff states that he has paid the full amount of rupees 1,000, but being dissatisfied with his purchase demands the repayment of the money.

7. Of the truth of this assertion some doubt exists and Plaintiff's plea that the land is not so valuable as he expected does not appear to be established, but in either case he (Plaintiff) has not sustained his title to recover the money in the manner he has adopted.

8. It is presumed that he understood that the article for which he dealt was of the value for which he agreed to purchase it at, and if he consented to pay too much for it, the act was voluntary on his part.

9. The decision of the Lower Court is cancelled and all costs in original and appeal suits are to be levied from the Plaintiff, now Respondent.

THE 10TH JANUARY 1857.

Appeal Suits Nos. 325 of 1852 and 178 of 1853.

Before Venkuppaya Sudr Ameen ;

Original Suit No 122 of 1852.

Appeal Suit No. 325 of 1852.

Sunkraya Bullalla, (2d Defendant,) Appellant.

Vakeel Nursapoy.

1. Soobbaya Bullalla, } Respondents, (Plaintiffs,)
2. Boyummah, }

Vakeel N. Anantaya.

Appeal Suit No. 178 of 1853.

Soobbaya Bullalla, (1st Plaintiff,) Appellant.

Vakeel N. Anantaya.

1. Kuntannare Bullalla,
2. Sunkraya Bullalla,
3. Coonny Ummoo,
4. Poodena,
5. Pacroochehajumma,
6. Mareyummah,
7. Moideen,
8 Calandoo,
9. Padee Soobbaya Shanbogue,
10. Moideen Cootty,
11. Melotta Coonnya,
12. Mareyummah,
13. Mayee Coonny,
14. Bapoo,
15. Cadree Hummade,
16. Mayum Coonny,
17. Hummade,
18. Moosse,
19. Pockra,
20. Mayen Coonny,
21. Mammoo,
22. Coonny Pariyayee,
23. Hummade,
24. Guggaya,

} Respondents.

On the demise of the Respondent's 1st, 7th, 8th, 9th, 17th, 18th, 19th and 21st, their respective heirs, 25. Maryuppah Bullalla, 26. Moosse, 27. Soobbraya, 28. Moideen Coonny, 29. Moideen Coonny, 30. Hussun Cootty, 31. Mayè Coonny,	Respondents.

1. The Plaintiffs in the original suit claimed certain land as share of ancestral estate, their title being based on a deed of partition executed by the 1st Plaintiff's uncle.

2. The Sudr Ameen decided in favor of the Plaintiffs excepting as regarded a certain house &c. whereupon the 2d Defendant and Plaintiffs both appealed, the latter urging that their title on the whole property specified in the plaint had been proved, and therefore they prayed for a verdict to that effect. The 2d Defendant puts forth that the documents *F* and *G* were forgeries, and making reference to other suits in which the parties were concerned, prays that the original decision may be cancelled.

3. The Respondents filed an answer to the appeal plaint.

JUDGMENT.

4. All the Defendants in the original suit excepting the 2d (now Appellant) allowed the suit to be tried exparte in reference to their interests and in another suit the 1st Defendant as well as 2d Defendant admitted that Plaintiffs were co-sharers of the property in question and in one other suit the 1st Defendant admitted that a deed of partition had been executed by the parties.

5. The oral testimony of five witnesses establish the fact of a division having been in regular course effected, and the documents *F* and *G*, being petitions of all the co-sharers regarding the payment of the revenue on their respective shares in addition to a copy of the deed itself, which is produced by one witness, must be received as proof of such a partition having really been effected. The deed of partition was filed in Original Suit No. 106 of 1846, and is present as Exhibit *J*.

6. The portion of property not allowed in the verdict of the Lower Court, appears to have belonged to a separate branch of the family, and the Plaintiffs have not proved their title thereto.

The decision of the Sudr Ameen is affirmed with costs. Appellant in Appeal Suit No. 178 of 1852 to pay his own costs.

THE 16TH JANUARY 1857.

Appeal Suit No. 21 of 1855.

Before the Moofty Sudr Ameen ;
Original Suit No. 5 of 1853.

Bapun Coonny, (Plaintiff,) Appellant.

Vakeel Ramachendraya.

1. Kristnaya,
2. Venkutramanaya,
3. Sheshuppah, on demise of the 2d,
4. Mungueshraya,
5. Soobbraya,

} Respondents.

1. The Plaintiff instituted the original suit to establish his title to certain land leased to him on terms of permanent tenure and claimed by virtue of a deed dated 5th April 1846 executed in his favor by the 1st Defendant. The Moofty Sudr Ameen nonsuited the Plaintiff with costs and thereupon the latter appealed urging that the Moofty Sudr Ameen had accepted the moolgueny chit as proved.

2. That it is irreconcilable with the remark in the decree as to the untrustworthiness of Plaintiff's witnesses, that the 2d Defendant admits the land must have been improved when he says it would sell for rupees 3,000 although the 1st Defendant gave only rupees 2,225 for it, from which the witnesses' statement regarding the improvement effected on the land must be true.

3. The Plaintiffs being in possession of the land is not disputed. That, if improvements have been made, it was not imperative on Plaintiff to produce an account in particular of all expenditure and adding further some remarks. Plaintiff prays that the decree of the Lower Court may be cancelled.

JUDGMENT.

4. When points on which evidence was required had been recorded for the exparte trial of the suit, the 2d Defendant filed

an answer objecting to Plaintiff's title because the 1st Defendant had pledged the land as security without making any allusion to the Plaintiff's lien on the same. It does not appear that the omission to note a charge upon certain land in an occasional document can be received as an acquittal of it from a bonâ fide liability. But the Exhibit No. 1 filed by the 2d Defendant is a survey list of the land and in it the claim of another party is noted, although in entering it in such a paper was contrary to an order (Exhibit *B*) of the Collector forbidding the practice.

5. It cannot therefore be argued (as is done in the decree of the Lower Court) that an irregular entry shewing a charge to exist on the land is proof that Plaintiff's claim, which was not so noted, must be unfounded. The Moofty Sudr Ameen's objection to the credibility of the plaint, because the Plaintiff has not shewn the items of expenditure on the land, is also beside the purpose, for the deed of lease requires no such condition. The deed *A* is unquestionably a true document, and considering the Plaintiff has sustained his plaint the decision of the Lower Court is cancelled, the Plaintiff's title to be recorded as being established and all the costs to be levied from the 4th and 5th Defendants.

THE 21ST JANUARY 1857.

Appeal Suit No. 25 of 1853.

Before the Moofty Sudr Ameen;
Original Suit No. 111 of 1851.

Ramanna Bhundary, Appellant, (Plaintiff.)

Vakeel Nursapoy.

1. Mya Saiba,
2. Ally Saiba,
3. Pedro Prubhoo,
} Respondents, (Defendants.)

2d Respondent by Vakeel N. Anantaya. 3d Respondent by Vakeel B. Santappa.

1. The original suit was instituted to recover rupees 149-7-2½, principal and interest claimed on account of a payment made by Plaintiff according to a decree of Court in behalf of the 1 Defendant for whom Plaintiff had become security, in reference to a

contract undertaken by the said Defendant with the terms of which he did not comply.

2. The 2d and 3d Defendants were made parties to the suit in consequence of their being concerned in reference to certain land which the Plaintiff endeavours to make responsible for his claim.

3. The Sudr Ameen decreed that the land could not be made liable for the claim, but since the 1st Defendant had allowed the suit to be tried exparte as regarded his interests, it was presumptive admission on his part of the justice of the Plaintiff's demand upon him, and therefore he (1st Defendant) was required to pay to Plaintiff the sum claimed and costs, while the Plaintiff should defray the costs incurred by the 2d and 3d Defendants.

4. The Plaintiff appealed against the judgment of the Lower Court urging, that certain land and a house should be made available for the satisfaction of his claim, for the agreement between 1st and 2d Defendants would not bar Plaintiff's lien on the land, that transaction being collusive.

5. The 2d and 3d Defendants both filed answers to the appeal plaint.

JUDGMENT.

6. The Plaintiff has not shewn that he has any claim to the land &c. which he endeavours to make responsible for his claim.

7. The fact of his having paid money on account of the 1st Defendant rests on presumption rather than proof.

8. There is not any reason apparent for disturbing the decree of the Lower Court which accordingly is affirmed with costs The 1st Defendant is to pay to Plaintiff rupees 149-7-2½ with interest up to date of payment and the costs of the original suit as far as chargeable to Plaintiff, while the Plaintiff will pay all costs in the appeal suit and those incurred by the 2d and 3d Defendants in the original suit.

THE 22D JANUARY 1857.

Appeal Suit No. 65 of 1853.

Before Venkuppaya Sudr Ameen ;

Original Suit No. 236 of 1851.

1. Munjenna Shetty,
2. Caluppah,
3. Tyampalla,
} Appellants, (Defendants.)

Vakeel Nursapoy.

Moideen Syba, Respondent, (Plaintiff.)

1. The original suit was instituted to recover rupees 32, principal and interest claimed by virtue of a bond executed by one Calla Shetty on 27th September 1847 for the sum of rupees 38, of which rupees 16 were repaid.

2. The Sudr Ameen decided in favor of the Plaintiff whereupon the Defendants appealed, urging ;

1st. That it has not been proved that the debt was incurred on account of Defendants' welfare or in any way applied for their family's benefit ;

2d. That enmity was cherished between Calla Shetty and them (Defendants) ;

3d. And the witnesses who depose regarding Defendants' promise to pay the sum demanded are creatures of the Plaintiff, who had instigated them to testify falsely, and therefore Defendants pray that the decree in the original suit may be cancelled.

JUDGMENT.

3. The bond is not proved to be binding on the Defendants, and there is reason to suppose that the debt was incurred by Calla Shetty for his own purposes as he was living at the time separate from the Defendants. The decree of the Lower Court is cancelled with costs to be payable in both suits by the Plaintiff.

THE 22D JANUARY 1857.

Appeal Suit No. 63 of 1853.

Bfeore the Moofty Sudr Ameen;

Original Suit No. 118 of 1851.

Kristnaya, (Plaintiff,) Appellant.

Ammoo, (Defendant,) Respondent.

Vakeel N. Anantaya.

1. The original suit was instituted to recover rupees 31-2-3, principal and interest claimed on account of a balance found due on an adjustment of dealings between the parties on 10th August 1850.

2. The Sudr Ameen dismissed the plaint with costs and the Plaintiff appealed, urging ;

1st. That the Defendant had summoned witnesses to prove that he had not been at the place on the date specified, but he dispensed with their testimony ;

2d. There was no necessity for proof as to each item of the accounts ;

3d. A bond was not required from the Defendant as the sum was small and Plaintiff trusted to his word and Plaintiff is contented to have the matter determined by the statement of Defendant on oath, and therefore Plaintiff prays that his claim may be allowed.

JUDGMENT.

3. The Defendant in his answer to the plaint proposed that the matter should be determined on the oath of the parties, but in his reply the Plaintiff did not allude by this proposal.

4. The evidence in reference to the adjustment of accounts is entirely oral and leads to no conclusion.

5. One witness only deposes that Plaintiff gave rupees 24 to the Defendant at different times and that Defendant returned rupees 4 and one other witness only deposes that the Defendant received from Plaintiff rupees 4.

6. This very vague testimony is quite worthless, and it is therefore clear that the Plaintiff has not established the justice of his claim. The decree of the Lower Court is affirmed with costs.

THE 24TH JANUARY 1857.

Appeal Suit No. 264 of 1854.

Before the Moofty Sudr Ameen;

Original Suit No. 48 of 1853.

Pootta Poy, (2d Defendant,) Appellant.

1. Innumma, 2. Pachoomma, } (Plaintiffs,) Respondents.

By Vakeel Abdool Rahiman.

1. This action was instituted to procure possession of certain land and also to recover rupees 15 claimed on the grounds of proprietorship as regards the former, and in reference to the ready money in that it was a value overpaid in sundry instalments of rice and timber on account of the conditions for redeeming the said land, which had been conditionally sold. The Sudr Ameen decided in favor of Plaintiff.

2. The 2d Defendant appealed, urging;

1st. That the Plaintiffs admit that the land had been sold to 1st Defendant 14 years previously, the deed of which sale he (Appellant) has in his possession in consequence of the 1st Defendant having mortgaged the same land to Appellant's brother, while the Plaintiffs do not possess a counter deed as always exchanged between the parties in case of the sale being conditional;

2d. If the money had been paid, the land would have been restored to the Plaintiffs by the 1st Defendant who remains in possession;

3d. The witnesses cited and examined in support of the one interested in favor of Plaintiff and therefore cannot be trusted. The Plaintiffs filed an answer to the appeal plaint.

JUDGMENT.

3. It is observed that the deed of sale of land executed by

Plaintiffs in favor of the 1st Defendant is not of a conditional character. It is an undoubted transfer outright of Plaintiffs' title to be land for value received from the 1st Defendant. The language is specific and unquestionable. The deed of mortgage of the same land executed by the 1st Defendant in favor of the 2d Defendant sustains the fact of the sale having been unconditional.

4. These two deeds are not disputed and are valid documents.

5. It is unnecessary to consider how forcibly the failure of the Plaintiffs to produce a counter deed shewing the sale to be conditional, tends to support the defence and destroy the value of their pleadings.

6. The Plaintiffs' claim is clearly quite unfounded and hereby is disallowed and dismissed.

7. The decree of the Lower Court is cancelled, Plaintiffs now Respondents) to pay all costs in both suits.

ZILLAH MASULIPATAM.

PRESENT: J. J. COTTON, ESQ., CIVIL JUDGE.

THE 28TH JANUARY 1857.

Original Suit No. 10 of 1855.

Hooggehella Rama Row, Plaintiff,

versus

T. D. Lushington, Esquire, Collector of Masulipatam, } Defendant.

1. This suit has been brought by the Plaintiff to impugn the legality of a sentence passed against him by the late Special Assistant Collector, and confirmed in review by the Defendant, as also the other proceedings of the Defendant consequent thereupon, and to recover rupees (595-12-10) five hundred and ninety five, annas twelve, and pice ten, from Defendant under distinct heads.

2. The chief plea urged by the Plaintiff is that being Head Jawabnevisse of the Magistrate, and not a native servant of the Collector's public establishment, or employed in the revenue department, he is not, and never was, amenable to be tried under Regulation IX of 1822. He accordingly brought this suit against the Collector to recover the sum specified, which has been illegally and by compulsion taken from him, Plaintiff, by Defendant acting under the Regulation IX of 1822 above quoted.

3. The Defendant at this stage of the suit took exception to the admission of the suit, under Section XVI, Regulation IX of 1822.

4. The Civil Judge on a consideration of the enactment quoted dismissed the suit on 1st May 1855.

5. On appeal made by the Plaintiff to the Sudr Court through his pleader, Mr. Salmon, the Appellate Court for reasons given in the proceedings dated 27th August 1855, directed the re-admission of the suit, and that it should be disposed of on its merits.

6. That Defendant in answer asserts that the Plaintiff was directly amenable to his jurisdiction, having been entertained on the public establishment of the Collector and Magistrate of Masulipatam under the designation of Magistrate's peshkar, and was simply a ministeral officer, without a particle of Police authority, and liable in the same manner as other servants on the Collector's establishment to be employed in any public duties which the Collector in his discretion might direct him to discharge.

7. In the next place this Defendant urges that even if Plaintiff had been vested with Police powers, he would have been equally amenable to the revenue authorities under the orders of Government laid down in extract from Minutes of Consultation dated 10th June 1850, Judicial Department No. 246, and as charges against the Plaintiff were preferred for misbehaviour, bribery &c. it was the duty of Defendant to proceed against Plaintiff under Regulation IX of 1822.

8. Finally, the Defendant pleads the non-jurisdiction of the Court in the present case under Act XVIII of 1850, as he acted throughout with good faith, and with full grounds for conviction that he has jurisdiction in the case in which Plaintiff was punished.

9. Plaintiff in his reply again denies the jurisdiction under which he was fined by the Collector, Defendant, and that Act XVIII of 1850, quoted does not apply in Defendant's case.

10. The rejoinder of Defendant reiterates the right of the Collector to proceed in judgment against Plaintiff, under the circumstances pointed out in his answer.

11 Points were recorded on the 14th May 1856.

Plaintiff to prove;

1st item. That Defendant has retained rupees (250) two hundred and fifty in his possession illegally on behalf of Government;

2d. That Defendant failed in his duty to draw the interest alluded to, and that he, Plaintiff, suffered loss thereby to this amount;

3d. That Defendant illegally caused to Plaintiff the loss complained of in this item;

4th. That Defendant illegally detained the sum of rupees (1,476-7-9) one thousand four hundred and seventy six, annas seven, and pice nine, in cash in his hands, thereby causing loss of interest to Plaintiff, during the period mentioned in this item.

May disprove the points given to the opposite party.

List of witnesses and documents to be presented on the reopening of the Court.

Defendant to prove;

1st. That Plaintiff was tried and sentenced by competent authority under Regulation IX of 1822, and to what extent;

2d. On what date Plaintiff was called on to furnish the security alluded to in para. 2;

3d. To what extent were the sentences passed against Plaintiff confirmed by any final authority;

4th. On what date was the property tendered in security given back, and account thereof rendered;

5th. To shew cause for any delay that may have occurred in so doing.

Both parties are at liberty to disprove the points given to the other.

List of witnesses and documents to be produced on the re-opening of the Civil Court.

12. Plaintiff examined 10 witnesses and Defendant examined none.

13. Plaintiff filed 27 documents and Defendant filed 16 documents.

JUDGMENT.

14. The Civil Judge having carefully considered the whole of the proceedings held in the present case observes as follows.

15. This suit has not been brought to recover personal damages for arbitrary or illegal acts done by the Defendant, but to question the jurisdiction of the Defendant in the first place,

and in the second as a corrollary to recover certain sums levied from Plaintiff, consequent on proceedings passed in alleged excess of jurisdiction.

16. The documents *A* and *B* are filed by Plaintiff, to prove that it had been already ruled by superior authority that Police officers are not amenable under the provisions of Regulation IX of 1822, which was thereby declared to apply solely to revenue officers accused of malversation, whereas the Regulation III of 1819, applied specially to Police officers' malpractices. The Civil Judge is of opinion that the above argument is founded on a fallacy. Regulation III of 1819 applies to offences of the following nature, viz. *extortion*, *oppression*, or other *abuse* of *authority*, committed by officers of Police. The Civil Judge interprets the wording of this enactment to apply to acts of oppression &c. *forcibly* committed by Police officers in their official capacity as such, and thus come more immediately under the denomination of *crimes*, in contra-distinction to misdemeanours. Although the general definition of the term *crime* comprehends *misdemeanour* as well, and is so to say synonymous, the former by common usage is made to denote such offences as are of a deeper dye than the latter, which comprises smaller faults and omissions of less consequence. In the former cases the Civil Judge considers that the offence is found to have been committed as *by force*, and in consequent opposition to the will of the party against whom the offender acted. In the latter, an illegal act may be committed, by an accused party, towards another who may nevertheless be, to a certain extent, consenting (as in the charges of bribery preferred against the Plaintiff). It may here be remarked that the only enactments declaring the offence of receiving bribes by public native servants penal are Section XII, Regulation XII of 1802, and Clause 2d, Section II, Regulation IX of 1822. The former regulation applies exclusively to ministerial officers of the Civil and Criminal Courts of Judicature, and the latter to those amenable to the Collector's jurisdiction. The Plaintiff by pleading irresponsibility under either of these enactments virtually claims immunity from charges of bribery altogether, as well as for the offence.

17. On the second hearing the Plaintiff in person urgently pressed upon the Court the plea of his complete irresponsibility to the jurisdiction of the revenue authorities by whom he had been sentenced under Regulation IX of 1822. But it was difficult to ascertain from him under what "general" regulation he considered that he could have been punished for *any* offence committed by him in his official capacity! He leans rather to Regulation III of 1819, but it seems clear to the Civil Judge that this regulation applies to native POLICE Officers (*such as are invested with Police power and authority*) to which the Plaintiff lays

no sort of claim. He however seeks to impress on the Court that since his name was included in the list of servants to whom salaries were disbursed through the "Magistrate," he must be considered a "*Magisterial*" or *Police* servant, and not one to whom Regulation IX of 1822 can be made to apply. The Civil Judge is of opinion that Plaintiff's duties being entirely ministerial and his official duties altogether of a passive nature, his responsibilities are confined solely to the way in which he wielded his pen in conformity to the orders given him by his immediate superior; thus his police *powers* are, properly speaking, as limited as those of the quill which he employed! Plaintiff urges the fact laid down in the words of the preamble of the above enactment (Regulation IX of 1822) that it was framed for the *Collector* to take primary cognizance of cases of "malversation in revenue affairs;" but ignores the further fact that by Sections XVII and XVIII (as also by others) of the same regulation, the Collector (not the Magistrate) is authorized to commit such cases as he may deem proper for punishment before the Criminal Courts. In fact that the regulation is a *penal* one to which all servants on the Collector's (and a priori Magistrate's) establishment are amenable for the offences enumerated in Clause 2d, Section II of that regulation.

18. On a deliberate and attentive consideration therefore of all these circumstances, and of what must have been the intent of the Legislature in framing the enactment, the Civil Judge is of opinion that the Plaintiff, a public native servant of Government, was liable to trial and punishment, for any of the offences enumerated in the above enactment; not one of them appears to be of a nature confined to native servants of a particular branch of the service, unless possibly the last portion of para. 4, Clause 2d, Section II defining the offences of falsifying accounts, "concerning the extent, value, classification or assessment of land," may be so interpreted. Therefore that the Defendant had full jurisdiction in subjecting the Plaintiff to trial under Regulation IX of 1822. If any doubt existed as to the construction to be applied to the regulation above quoted, it seems removed by the extract from the Minutes of Consultation dated 10th June 1850, Judicial Department, No. 346 and not 246 as quoted in the answer, which definitely declares that all native functionaries employed in the discharge of Police and Revenue duties, are amenable to the Board of Revenue (Revenue authority) in both capacities.

19. The question of jurisdiction having been thus disposed of, the other points for determination are whether or no "loss" was sustained by the Plaintiff at the hands of Defendant, by the illegal realization or unreasonable detention of any sums of money levied as fine under the above enactment, which were set aside subsequently in appeal; or, secondly, through any failure of duty

on the part of Defendant in negotiating items of interest &c &c. that fell due, while certain Government bonds, the property of the Plaintiff, remained in his possession.

20. Plaintiff has urged that he suffered a "loss" by the sale of a Government 5 per cent promissory note in this town, at only 1 per cent premium, whereas the same Government paper was selling in Madras at the higher rate of 5½ per cent, such sale having been a forced one, to his detriment. From the evidence of the 7th and 8th witnesses it would appear that the bond in question was sold in due course in consonance with a proclamation (filed by Plaintiff marked *N*) affixed to Plaintiff's door to that effect. As to the rates at which such bonds were saleable in Madras, or in any other portion of India, it is immaterial. The sale was advertised to take place in Masulipatam where it ultimately was effected in favor of the 7th witness at a premium, and no objection was offered by the Plaintiff at the time the money was paid on account by that witness, and when also at his, Plaintiff's, request a portion of it was paid to the 8th witness to clear off a debt due by Plaintiff to that party.

21. With regard to the sale of the bond alluded to by the Special Asistant Collector in accordance with the orders of the Defendant, the Civil Judge has carfully weighed the arguments adduced by either party. It appears that the first application for an appeal by the Plaintiff in Case No. 8 through the Defendant was rejected for reasons assigned (alluded to in the endorsement on document "*O*") and the decision against Plaintiff was ordered to be enforced. The Plaintiff upon this protested (documents *L*, *M*, *O*) against the proceedings of the Revenue authorities directing the payment forthwith of the fines imposed on Plaintiff in Case No. 8 pending the receipt of orders from the Commissioner on the subject, and until this appeal should be *finally* disposed of; because, of the amount of security deposited with the Special Assistant Collector being more than sufficient to cover *all* the fines imposed against Plaintiff in any of the cases tried under Regulation IX of 1822 by that officer, and because by the Circular Order Board of Revenue (foot note No. 4 at page 199, para. 5) the higher authorities (Appellate) had full power to extend the period of appeal (on due cause being shewn) laid down in Regulation VII of 1828. The expiration of this period was apparently the reason under which Plaintiff's application for appeal had been rejected, although one main cause of such delay was stated to be from the difficulty of obtaining a copy of the original decree in the first instance, on which to base his appeal. As to the propriety or otherwise of the Defendant himself rejecting the application of the Plaintiff to forward his appeal to the higher Appellate authority, this Court is not called on to decide. It appears, however, under the peculiar circumstances of the case, that the enforcement

of the penalty against the Plaintiff was needlessly arbitrary thus far and objectionable, since the amount of tangible security in hand was sufficient to provide against every contingency, and because upon a subsequent appeal to the Commissioner from the order of the Defendant that order was reversed, and the application of the Plaintiff for an appeal was directed to be admitted (*E*).

22. On the 13th March 1854 the Collector held proceedings (*G*) modifying as subsequesntly stated by an error in his office the decision of the Special Assistant Collector, which however was upheld by the Commissioner Northern Circars when the remainder of the amount of fine assigned against the Plaintiff was confirmed. An omission to refer the petitioner to seek further "*redress*" in the Courts of Udalut if still dissatisfied was supplied by the endorsement dated 5th November 1855, filed in a special appeal to the Civil Court.

23. Thus in addition to the present cause of action in which the jurisdiction of the Revenue authorities has been called in question with particular reference of the 2d count in Revenue Case No. 8 of 1851 (on the Special Assistant Collector's file). *The merits of the decision itself* is under appeal (for THE 3D TIME) in the Civil Court, under the liberal construction placed by the Court of Sudr and Foujdaree Udalut on Section VI, Regulation VII of 1828. The Civil Judge considers that the present course should have been laid down for adoption in *all* cases alluded to in the last quoted enactment; for that after 2 appeals in the superior Courts of Exchequer, the results should have been definite and final on the points then and there urged, bearing reference to the "relief" prayed for; any "redress" sought for from the Courts of Udalut being confined to questions on jurisdiction, or on the legality of such former proceedings.

24. The next plea urged by Plaintift is that Defendant failed in his duty to realize the interest due on the said bond while under "attachment," and to pay the same to him, Plaintiff, in accordance to his request to the Acting Tahsildar who attached the bond in the first instance, together with other property, under the orders of the Defendant as security for a large amount of fines imposed on Plaintiff by the Special Assistant Collector.

25. Upon an examination of Plaintiff's 10th witness, Mr. Marjoribanks, it appears that without a direct application to the Collector, or unless the bonds are voluntarily deposited with that functionary for security, when also they must pro formâ be transferred to his name, no security is ever drawn. The bond under consideration never was transferred as above, and the simple urzee

to the Acting Tahsildar, as above quoted, was altogether insufficient authority for the Collector to act in the matter, as the bond remained in the name of the Plaintiff, and all applications and receipts for interest due on such bond must be preferred in person or by attorney to the Collector before it could be admitted. The Civil Judge is of opinion that no such direct application was at any time made though the 4th witness declares that he did make one at the request of Plaintiff, which assertion is backed by the 3d witness, but a perusal of their depositions shews their untruthfulness throughout : they are utterly worthless and devoid of any credit.

26. The last item urged by Plaintiff against the Defendant is on account also of interest due upon the sum finally repaid to him, but which had been retained by the Defendant from the date of the sale of the abovesaid bond 15th June 1852 up to that of payment of the amount, 5th Febuary 1855

27. The Civil Judge has carefully examined the record to ascertain what delay was incurred in the repayment of the above sum to Plaintiff. Document marked *J* seems to refer to an application bearing date 6th August 1854 (not filed) made by Plaintiff for the return of some securities, and the Defendant's document (No. XII) is a true copy of a receipt by the Plaintiff for the securities &c. alluded to in *J*, as well as of the endorsement itself; Plaintiff's document *I*, is an endorsement dated 26th December 1854 upon another petition of the Plaintiff dated 29th November 1854 (not filed), informing him of the transmission of the balance then remaining in the Defendant's treasury of sums received from him (Plaintiff) whether as security or fines with the exception of rupees (250) two hundred and fifty otherwise accounted for.

28. The last proceedings on the record *(Y)* reversing any of the decisions against the Plaintiff are dated 30th August 1854, and the others *(R, T, V, X)* are dated the 13th March of the same year. There is nothing on record to shew that Plaintiff made application, or when, to the Defendant for the repayment of such fines ordered to be returned to him by the above proceedings, beyond the endorsements (documents *I*, *J*) above mentioned, and there does not appear to have been any unreasonable delay on the part of the Defendant in transmitting the sums so awarded to Plaintiff, which were duly acknowledged by him, as having been received through the Chief Magistrate at Madras (Nos. 14 and 16).

29. The objections put forth by the Defendant in respect to the jurisdiction of the Civil Court, in reference to the provisions of Act XVIII of 1850 are still to be considered. The Civil

Judge is of opinion that the present suit has been rightly brought to question the authority of the Defendant in the matter at issue. The decision on this point will naturally involve that of this Court's jurisdiction in regard to the fine of rupees (200) two hundred in Case No. 8, as the latter question depended on the former. The merits of the decision in that case, however, is not at present under review, but simply the question of the authority of the Defendant, as a revenue officer to adjudicate on charges of the nature alluded to in Clause 2d, Section II, Regulation IX of 1816 against the Plaintiff, and the legality of his acts consequent on those proceedings.

30. Upon a full and careful consideration of the whole case, the Civil Judge is of opinion ;

i. That the Revenue authority, the Collector, to wit the Defendant, had authority to proceed against and to punish the Plaintiff, under the provisions of Regulation IX of 1822 for the reasons given ;

ii. That the Defendant is not liable on the second item of plaint, for that he did not fail in his duty, to realize interest falling due on a certain Tanjore bond, the same never having been either endorsed over to Defendant, nor any application made to him by Plaintiff, or his constituted attorney, to realize such interest ;

iii. That the Defendant is not liable for the 3d item of plaint on account of loss of premium resulting from the forced sale of Plaintiff's bond for rupees (2,000) two thousand, No. 12,421 of 1841-2 as it realized the market rate in the place where it was sold, and this rate was in excess of the actual value of the bond itself, and that the sale of this bond, though declared to be ojectionable, was nevertheless legal ;

iv. That the Plaintiff's claim for interest laid in the 4th item is untenable ;

Finally, the Civil Judge resolves to dismiss the suit with all costs.

THE 9TH JANUARY 1857.

Appeal Suit No. 5 of 1856.

Appeal from the decision of Moulavee Mahomed Hamed Ooddeen Saib, Sudr Ameen of Masulipatam, dated 25th September 1855.

Tummanah Soobbanah, (Plaintiff,) Appellant.

1. Doopakoontla Abbiah, *alias* Peda Abbiah,
2. Tatavurty Brahmanah,
} (Defendants,) Respondents.

1. The original suit was brought to recover rupees (227-3-8) two hundred and twenty-seven, annas three, and pice eight, being the balance of principal and interest of the value of goods transmitted by Plaintiff to 1st Defendant, through the 2d Defendant's late father, as per account particulars rendered.

2. 1st Defendant denies that any monetary transactions took place between him and Plaintiff.

3. 2d Defendant in a separate answer confirms the answer of the 1st Defendant.

4. Reply and rejoinder filed.

5. Plaintiff filed 12 documents, and examined 6 witnesses.

6. 1st Defendant filed 11 documents.

7. The Sudr Ameen upon a due consideration of the evidence &c. was of opinion that the transactions took place through the 2d Defendant's father and not directly between Plaintiff and the 1st Defendant, but that Plaintiff's claim to only rupees (66-2-5) sixty-six, annas two, and pice five, had been proved, which sum he directed should be paid by the 2d Defendant with proportionate costs.

8. The Plaintiff appealed on the plea that the Respondents examined no witnesses in support of their documents, which moreover did not support one another. That the Letter No. 3 is inadmissible as evidence at all, and is under any circumstances incredible, being in opposition to his, 2d Respondent's, father's former Letter No. 1. That his claim to interest under the circumstances pointed out is strictly legitimate, under Act No. XXXII of

1839. That the exoneration of the 1st Respondent from liability in this suit was unjust, as well as the rejection of several items of the plaint.

9. 1st Respondent in answer upholds the original decree, and prays that the appeal may be dismissed.

JUDGMENT.

10. The Civil Judge upon a perusal of the proceedings before the Lower Court, and what is urged in appeal, observes that the Sudr Ameen has carefully collated the whole of the evidence and weighed it duly. The objections urged by the Appellant to the decree of the Lower Court are futile, and undeserving of further comment; as the points are fully met in the very voluminous original decree. The Civil Judge finds no cause to interfere with that judgment, and therefore resolves to confirm it with costs against the Appellant.

THE 31ST JANUARY 1857.

Appeal Suit No. 6 of 1856.

Appeal from the decision of Poloory Venkatacroostniah, District Moonsiff of Masulipatam, dated 21st November 1855.

Sanah Chinna Venkanah, } (Plaintiff,) Appellant.

Goondah Prehiah, (Defendant,) Respondent.

1. Plaintiff sues for the recovery of rupees (209-10-2) two hundred and nine, annas ten, and pice two, being the principal and interest due on account.

2. The Defendant denied the claim, and states the sum alluded to is on account of a hoondee granted by the Plaintiff on one Appanah at Juggiahpettah which was protested, but the sum was paid subsequently by Plaintiff at his, Defendant's, request, to one Ammiah, in whose favor the original hoondee had been drawn, and the amount was debited in account by Plaintiff against him, Defendaut. That a sum of rupees (383-5-0) three hundred and eighty-three, and annas five, being due by Plaintiff to him, Defendant, on account, he debitted Plaintiff with that sum, and laid a suit, to recover the balance (No. 788 of 1854, Appeal Suit No. 36 of 1856). The present suit has been brought by Plaintiff in bar of that claim.

3. The District Moonsiff on a consideration of the record as well as that in Suit No. 788 of 1854, and also No. 28 of 1855, was of opinion that although the parole evidence supported the Plaintiff's claim, still that it was incredible, from what was manifest on the documentary evidence, and that the sum now sued for was indentical with that sued for in No. 28 of 1855 although bearing a date in his, Plaintiff's, accounts two days subsequent to that claimed in the other suit. The Plaintiff's present suit was therefore dismissed with costs.

4. Plaintiff appealed, and maintains that the sum sued for in this, and that in No. 28 of 1855, are totally distinct ; for that otherwise Defendant would have received back the hoondee (filed *B*) on the sum being paid to Ammiah, by Respondent, and borrowed from him, Appellant, on 5th October 1854, whereas the amount alluded to in No. 28 is no where stated to have been paid to Ammiah, and was a distinct loan. He finally prays that the Lower Court's decree may be reversed.

5. The Respondent urges that the sum alluded to in No. 28 having been paid to Ammiah by Appellant, according to the entry made by Respondent, he was unable to get back the hoondee in question. The Appellant never would have lent him the second sum before liquidation of the first, and two days after the other had been made.

JUDGMENT.

6. The Civil Judge upon a full consideration of the records in the present and in the Appeal Suits Nos. 34, 35 and 36 of 1856, has already declared his views on the subject of the transactions between the two worthies now litigant in these cases and 2 witnesses in No. 788 of 1854.

7. The Civil Judge fully concurs in the opinion expressed by the Lower Court that the amount sued for in this suit is identical with that in Suit No. 28 before the same Conrt, and that Plaintiff, Appellant, has taken advantage of his position and circumstances, to enter the sum twice over in his accounts, on two dates, within 2 days of each other. The reasons given by the District Moonsiff for the rejection of the parole evidence, are satisfactory, and the Civil Judge has no hesitation in rejecting this appeal with all costs, and fining the Appellant (15) fifteen rupees for preferring a fictitious and frivolous appeal under Section XXXV, Regulation IV of 1802.

THE 31ST JANUARY 1857.

Appeal Suit No. 34 of 1856.

Appeal from the decision of Poloory Venkata Krooshniah, District Moonsiff of Masulipatam, dated 21st November 1855.

Goondah Pitchiah, (Defendant,) Appellant.

Soumah Chinnah Venkannah, (Plaintiff,) Respondent.

1. The original suit was brought to recover from Defendant rupees (207) two hundred and seven, being principal and interest due on account dated 5th October 1854.

2. Defendant in answer states that the sum of rupees (200) two hundred entered in the Plaintiff's account on the date in question, is the same which was paid by Plaintiff to one G. Ammiah on account of a dishonored hoondee as detailed by him, Defendant, in his answer in Original Suit No. 27 and that if this sum be deducted from the sale proceeds of goods referred to, there will be found a balance of rupees (183-5-0) one hundred and eighty three, and annas five, due to him, Defendant, as sued for in his complaint in No. 788 of 1854.

3. Plaintiff filed one document.

4. Defendant examined 3 witnesses.

5. The District Moonsiff on consideration of the record of this suit as compared with those in Original Suits Nos. 788 of 1854, and 27 of 1855, observes that the Defendant admitted the obligation to Plaintiff, but debited the sum in question against a sum, the balance of which on account was the subject of Suit No. 788 of 1854. That suit however was dismissed; nevertheless the Defendant is liable for the amount of this claim. He therefore passed judgment in favor of Plaintiff for the amount sued for, with interest and costs.

6. The Defendant being dissatisfied with the Lower Court's award, appealed, and recapitulates the substance of his pleadings (in Original Suits Nos. 788 of 1854, 27 and 28 of 1855) and alludes to the fictitious claims brought by Respondent, Plaintiff, in the two latter cases. That he has appealed in No. 788 of 1854, and should that decree be in his favor, the decree of the Lower Court in this case must necessarily be quashed. Appellant therefore prays that this appeal may be taken into consider-

ation with his Appeal No. 35 of 1856, and the Lower Court's decree be reversed.

7. The Respondent upholds the justice of the Lower Court's decree, and after reiterating the justice of his statements in the various suits now under consideration, prays that the present appeal may be rejected as frivolous and fictitious.

JUDGMENT.

8. The Civil Judge has duly considered the records in all the several cases now before the Court in which this Appellant and this Respondent are engaged.

9. The Civil Judge has recorded his opinion of the nature of the transactions between the Appellant, and Respondent, Defendant in Suit No 788 of 1854 and Appeal Suit No. 35 of 1856, and observes that the present suit and that in No. 27 of 1855, shew clearly that here at least there is no *honesty among thieves.*

10 The Civil Judge entirely concurs in the opinion of the Lower Court that the items under litigation in the present case, and in Appeal Suit No. 6, are identical, and that the Plaintiff, Respondent, has knavishly entered them as two separately and distinctly. Whether this sum of rupees (200) two hundred was drawn and paid on account of Ammiah alluded to in Appeal Suit No. 36 of 1856 is not apparent, though the hoondee was drawn originally on account of sale proceeds of goods fraudulently transferred through the Respondent to one Appannah at Juggiahpettah, as alluded to in the decree in No. 36. The sum now sued for is admitted by the Appellant, Defendant, as a bonâ fide transaction, and as such he was responsible for the same to Respondent. There are no grounds at all for this appeal which is merely fictitious and litigious. The Civil Judge resolves therefore to reject it as such, and to fine Appellant (10) ten rupees, under Section XXXV, Regulation IV of 1802, and he will further pay the Respondent's costs.

THE 30TH JANUARY 1857.

Appeal Suit No. 35 of 1856.

Appeal from the decision of Poloory Venkata Kroostniah, District Moonsiff of Masulipatam, dated 10th November 1855.

Saumah Chinna Venkannah, (Defendant,) Appellant.

Goondah Pitchiah, (Plaintiff,) Respondent.

1. The preamble of this case has already been recorded in Appeal Decree No. 36 of 1856, and the present appeal was brought to set aside that portion of the original decree which directed him, Defendant, to pay his own costs; for that the Plaintiff's claim having been dismissed as illegal and untenable, his costs in that suit should have been recovered to him, and he therefore prays that the Lower Court's decision on the above point may be modified.

JUDGMENT.

2. The original suit appears to have been brought in continuation of one vast conspiracy as pointed out in the Court's Appeal Decree No. 36 of 1856, in which the present Appellant was also deeply implicated. The knavery exposed deserves no commiseration, and there is no cause whatever shewn to comply with this Appellant's prayer.

3. Appeal dismissed with all costs.

THE 30TH JANUARY 1857.

Appeal Suit No. 36 of 1856.

Appeal from the decision of Poloory Venkata Kroostniah, District Moonsiff of Masulipatam, dated 21st November 1855.

Goondah Pitchiah, (Plaintiff,) Appellant.

Saumah Chinnah Venkannah, (Defendant,) Respondent.

1. The original suit was brought to recover rupees (183-5-0) one hundred and eighty-three, and annas five, being balance of the value of goods mortgaged by Plaintiff to Defendant, and transmitted by the latter for sale at Juggiapett, together with profits and interest, and costs of suit.

2. Defendant denies the claim, and states that Plaintiff took back the mortgaged goods from him, and himself forwarded them for sale as stated, without his, Defendant's, interference in any way.

3. Plaintiff filed 7 documents, and examined 6 witnesses.

4. Defendant filed 2 documents, and examined 8 witnesses.

5. The District Moonsiff considered that a third party was responsible, if any, for the amount sued for, and therefore dismissed the plaint, each party being directed to bear his own costs.

6. The Plaintiff appeals on these grounds;

1st. That Defendant, Respondent, admitted that the goods in question were mortgaged to him by Appellant;

2d. That the record shews that Respondent himself transmitted those goods to the 7th witness, agreeably to the terms of a kararnamah produced by him, 7th witness;

3d. That if it was true that he, Appellant, took back the mortgaged property, Respondent would have taken his signature to the account regarding it, and he would not have granted him a hoondee for rupees (200) two hundred on a subsequent date, nor have addressed a letter to 7th witness requesting remittance of the balance;

4th. That the accounts produced by 8th witness are no proved, nor acknowledged by him (Appellant);

5th. That 8th witness has no right to the property alluded to, as is evident by the kararnamah.

7. The Respondent in answer upholds the decree of the Lower Court. Urges that the goods in question having been transmitted by Appellant himself to 7th witness, he, Respondent, is not in any way responsible to Appellant for their value.

JUDGMENT.

8. The Civil Judge upon a careful examination of the record, observes that it appears that Plaintiff, Appellant, was the agent of the 8th witness, and was engaged to forward certain goods in question to him for sale. That at the instant of the dispatch he, Appellant, learned the bankruptcy of the 8th witness, and consequently took improper measures to prevent the property in question from falling into the hands of 8th witness' creditors ; with this view he approached the Defendant, Respondent, with whom he appears to have had monetory transactions, and was thereby indebted to him, Respondent, for a sum of about rupees (1,200) one thousand two hundred, and entered into arrangements by which he hypothecated the goods in question to the Respondent, while in transitu, and by a kararnamah, admitted by either party (though not filed of record) agreed to abide by the profit or loss on the articles, on their subsequent sale through a third party, the 7th witness, to whom a communication was addressed by Appellant in the name of the Respondent (not filed) to transact the business, according to instructions enclosed. What these instructions were it is impossible to ascertain, as there is no clue to them on the record. But by 7th witness' deposition it appears he remitted a certain sum of money, rupees (350) three hundred and fifty, on account of the goods in question which had been disposed of to Defendant, with whom he is acquainted only by correspondence, and never had any other transactions; the total value of goods which he received as above is stated by him to be rupees (510-12-0) five hundred and ten, and twelve annas. With regard to the balance it appears that no remittance has been made, nor in fact the accounts submitted for adjustment; he adds that though the letters of consignment were in the name of Defendant, the goods themselves were the property of the 8th witness, who being indebted to him in a certain amount rupees (170) one hundred and seventy, he repaid himself by the sale of the above goods, under the instructions from Defendant. This witness states distinctly that the goods alluded to never belonged either to Plaintiff or Defendant, but to the Plaintiff's master the 8th witness (bankrupt), as the kararnamah received indicated as much. With reference to the balance of goods which never reached his, de-

ponent's, hands, having been seized by 8th witness' creditors, he received a letter from Defendant forwarding the acquiescence of the 8th witness to his, deponent's, possessing himself of the said property, but it had been appropriated already by 8th witness' creditors. As 8th witness shewed him, witness, an account with the Plaintiff in which the articles in question were duly entered as *his* (8th witness') property, he considered that he was bound to produce an account particular of the sale of these goods to 8th witness, and not to the Defendant.

9. It seems evident from the record that the whole transaction of the Plaintiff was based in deep fraud. Aware of the bankruptcy of his master the 8th witness in whose name the property in question had been purchased by the Plaintiff, his goomastah, he fraudulently and clandestinely went through the form of mortgaging the goods to Defendant, in order that they might stand in his name should the creditors of his master hear of the remittance, and though there were no transactions whatever up to that time between the Defendant and the 7th witness, he, Plaintiff, pretended to negotiate in the name of the Defendant with the latter to effect the sale of the goods in question, remitting the sale proceeds, as if to the Defendant, when Plaintiff would be able to secure the sums on account of his master the 8th witness, and thus escape the lien of the creditors, *except* the 7th witness himself who was enabled to re-imburse himself at the expense of the rest. That the goods in question were bonâ fide the property of 8th witness may be inferred from the fact that his creditors succeeded in capturing one bandy load of them, and no steps were taken by Defendant to recover the same ; on the contrary he, Defendant, was induced to procure the sanction of the 8th witness for the recovery of the goods by the 7th, whom they could in no way benefit.

10. The whole appears to have been a deep laid conspiracy of the Plaintiff, the Defendant, and the 7th and 8th witnesses, to defraud the creditors of the latter, and the present suit has evidently been brought in continuation of the above.

11. The Civil Judge therefore in confirming the decision of the Lower Court dismissing the present appeal with costs, resolves to impose a fine of rupees (30) thirty for the present fraudulent and litigious appeal, under Section XXXV, Regulation IV of 1802.

ZILLAH NELLORE.

PRESENT: F. H. CROZIER, ESQ., CIVIL JUDGE.

THE 5TH JANUARY 1857.

Appeal Suit No. 39 of 1856.

Appeal from the decision of Napate Seshigirirow, Acting District Moonsiff of Caligiry, dated 2d July 1856.

Amparoyani Vencatanarasoo, Appellant, the 2d Defendant,

versus

1. Conda Caseevoolooreddy,
2. Conidela Seetaramireddy,

} Respondents, the Plaintiffs.

1. This is an appeal preferred by the 2d Defendant from the decree of the District Moonsiff of Caligiry adjudging the 1st Defendant, heir of the deceased Jangam Reddy, and the 2d Defendant to pay rupees 734-1-7 and costs claimed by the Plaintiffs as follows. Balance of advances made by the Plaintiff rupees 327-4-7, which should be received from rupees 938-7-0, being the value of paddy received by the 2d Defendant as per last settlement of accounts signed by him after inspection of accounts with the 2d Plaintiff on the 22d October 1854 regarding the joint trade in grain and rupees 407-6-1 which fell to the two shares of the 2 Plaintiffs out of the remaining amount of profit.

2. The 2d Defendant advances in his appeal the following grounds. That the disputed account does not shew the Plaintiffs, Respondents, delivered grain or paid money to him; that the account was forged; that as it contains also the signature of the 2d Plaintiff

resembling his own, he should have been Defendant and not a Plaintiff in the suit ; that no traffic could be carried on in shares without executing a kararnamah ; that the 1st Defendant was gained over by the Respondents and that his plea was fully proved.

3. Respondents aver in their answer that their claim was established as observed by the Lower Court, that the 2d Defendant's kyfeut to the effect, the signature under the settlement of account resembles his own ; supports the Respondent's claim ; Appellant's witnesses are his relations ; his plea was not proved and it is usual to carry on trade without a kararnamah.

4. S. Vencaya, the original 1st Defendant, presented a motion on the 18th September 1856, admitting the truth of the Respondents' claim stating that as the Appellant had seized the paddy in dispute, he intends bringing a suit against him, and prays the Court will not charge him with appeal costs.

JUDGMENT.

5. It appears from the record of this case that the account, in which occasional settlements were made, and wherein the signature of the 2d Defendant, Appellant, is visible, shews that all the advances were made by the 1st Plaintiff, Respondent, alone for the joint trade ; that the parties purchased grain for the sums and sold it again ; this fact is established by the Plaintiff's witnesses and the 2d Defendant did not object to their evidence ; the 2d Defendant, the party chiefly concerned in the suit, stated in a kyfeut before the Lower Court, the signature under the last settlement of account resembled his; further the signature compared with that of the 2d Defendant in other places, although the Plaintiff also signed other of the settlement accounts shewing his concurrence generally in them, yet the 2d Defendant contending the 2d Plaintiff should also be amenable to discharge the advances made, and for proportionate shares of the profit which ought to have been paid by the 2d Defendant, Appellant, from the sale of the grain, he allows to have been in his possession, is not right, and as the account shews the particulars of the transaction carried on in shares, the execution of a separate document to that effect is not necessary, those examined on behalf of the 2d Defendant, Appellant, to prove that he had no concern in the joint trade, and that the 1st Plaintiff has not sufficient property to make advances, are not eye witnesses ; their evidence therefore cannot invalidate the Plaintiff's claim ; further, the evidence of the 2d Defendant's 5 witnesses who state the Plaintiff has sufficient means to make advances, supports the Plaintiff's claim as does also that of his, 2d Defendant's, 3d witness, wherein he states the 2d Plaintiff and Jangam Reddy carried on a joint trade. The decree of the Lower Court is confirmed, the 2d Defendant, Appellant, to bear the costs of appeal.

THE 5TH JANUARY 1857.

Appeal Suit No. 49 of 1856.

Appeal from the decision of Mahomed Bazila Ally Saib, Sudr Ameen of Nellore, dated 8th August 1856.

Velidundla Venkaya, Appellant, the 1st Defendant,

versus

Tolumrazee Survalakshamma, Respondent, the Plaintiff.

1. This is an appeal preferred by the 1st Defendant from a decree of the Moofty Sudr Ameen adjudging the 1st and 2d Defendants who live jointly to pay rupees 99-11-8 principal and interest due on a document said to have been executed for rupees 70 on the 15th September 1852 in favor of the pauper Plaintiff, Respondent, by the 1st Defendant and costs of litigation.

2. 1st Defendant appeals on the following grounds. That he having supposed an extention of time would be allowed for presenting his answer he attended too late and the Lower Court rejected his request to present his answer. Although he could not originally defend the suit he denies the document and states the Plaintiff's daughters at whose marriages she says she obtained the money in dispute, were not married at the date of the document; that those who married her daughter subsequently gave nothing, and her 3d witness disproves the document; that while there are Curnums, Capoos and merchants residing in the village in which the document is said to have been executed she named strangers and one is illiterate; that this witness and the 1st gave evidence in other suits also before the Moofty Sudr Ameen; that while his elder brother Lingappah manages the family property, there was no occasion for Appellant to give documents; that disputes having arisen between Lingappah and the Plaintiff documents were executed before the Police between them; that there are to be no mutual transactions; he further prays his witnesses may be examined remanding the suit to the Ongole District Moonsiff near whose Court he resides.

3. No answer was presented

JUDGMENT.

4. It appears from the record of this case the bond in dispute, a cadjan, is not in the handwriting of the 1st Defendant, Appellant, and the signature to it said to be his, is dissimilar from

that on other parts of the record; the Plaintiff's, Respondent's, 3d witness declares be knows nothing of the bond, and denies the attesting signature to be his as asserted; the 2d witness, an illiterate person, cannot clearly identify the document; the evidence of the 1st witness is therefore single; further, neither the 1st nor 2d witness saw the money lent; also the 2d witness adds the bond in question was executed for a balance struck on a settlement of accounts of former dealings, and the 1st witness was present when he went there and when the 1st Defendant, the Plaintiff and Plaintiff's 3d witness, were then inspecting the accounts; while on the contrary the 1st witness states he was not present at their inspection. The 2d witness is a cooly, the 1st a school teacher are not residents of the Defendant's village, and it is unlikely they should have been selected as witnesses, while Capoos and Curnums, residents of the village, were available; these 2 witnesses it appears have appeared for Plaintiff in other suits also; it further appears from the record Plaintiff lived and maintained herself separately from her husband, and it is therefore unlikely she should have received the money at the marriage of her daughter and again lent it; the 1st Defendant states owing to family disagreement the document was fabricated; however the evidence in its favour being wholly deficient, the Court resolves to reverse the decree of the Lower Court adjudging the Plaintiff, Respondent, to pay the costs of both Courts.

THE 7TH JANUARY 1857.

Appeal Suit No. 48 of 1856.

Appeal from the decision of Mr. James Wilkins, 2d Class District Moonsiff of Ongole, dated 5th August 1856.

Cherukuri Seshaya, Appellant, the Plaintiff,

versus

1. Addunki Mahalakshamma, } Respondents, the Defendants.
2. Do. Viranna *alias* Abbaya, }

1. Plaintiff originally brought this suit against the 1st Defendant, widow of Appaya deceased, as guardian and mother of his minor sons, and kins, and the 2d Defendant his adopted son for recovery of rupees 223-6-0, being the principal and interest due on a bond said to have been executed by Appaya for rupees 200 on the 28th April 1854 in favor of the Plaintiff, but the Ongole Moonsiff by his decree made the Defendants amenable for rupees sixty-

four only together with subsequent interest and proportionate costs as he considered Defendants only inherited that sum and he dismissed the Plaintiff's claim to the remainder together with costs.

2. Plaintiff appeals on the following grounds, that the Lower Court admitted the bond was proved; that though no points were recorded to prove as to what extent the deceased's property was inherited by Respondents, yet the Appellant's 1st, 2d and 4th witnesses prove that the Respondents are in possession of 20 culchalas of mauniem lands yielding annually a profit of rupees 600 or 700, beyond the property mentioned in the Lower Court's decree; that it is not right the District Moonsiff should state his opinion, the above lands were not in the Respondent's possession trusting to mere hearsay evidence; that they were mortgaged while there is no evidence to particular lands having been mortgaged; that the Respondents lately had their names entered in the puttahs held by Appaya for lands from which there is a profit of rupees 100 annually; that all these lands are valued at rupees 11,000 and the Defendants (Respondents) allowing the judgment to go by default, in original suit shews they did not deny the Plaintiff's, Appellant's, claim; and, in conclusion, Appellant prays the Court to allow him the sum disallowed.

3. 1st Respondent, while admitting the truth of the Plaintiff's claim states, the 2d Respondent and herself had in their possession the landed estate from which a profit of rupees 400 is annually derived, besides the lands mortgaged; that while Appaya and the 2d Respondent had mentioned in a cowl given for the mauniem lands in Takkellapad, that the money payable by the renter should go in liquidation of the Appellant's debt and affixed their signatures to it and 2d Respondent got possession of the same without liquidating the debt as agreed on; that in consequence she is not bound for the original or appeal costs and that the 2d Respondent and herself had agreed that Appaya's debts should be paid by the 2d Respondent in proportion for his ⅓d share and ⅔ds by her for her minor sons and that a decree should be passed adjudging the 2d Respondent and herself to pay the amount claimed.

4. The 2d Respondent prays in his answer that he may be excused for failing to defend the original suit through sickness; that the disputed bond is a false one; that the 1st Respondent and others combining forged it; that the 1st witness is the 1st Respondent's mother and others are protected by her and others; that no confidence can be placed in their evidence and he, 2d Respondent, has been suffering from want, and that he does not possess the property ascribed to him.

JUDGMENT.

5. It appears from the record, the bond in dispute was proved

by the 3d witness the writer thereof and by the 1st and 2d witnesses who attested it. The Defendants did not defend the original suit; the authenticity of the bond is therefore not doubted. The Plaintiff, Appellant, was to prove the Defendants inherited the deceased's property and should discharge his debts, but Plaintiff, Appellant, did not prove either the value or profit of the puttah lands alleged to have been in the deceased's name and inherited by the Defendants, Respondents, the mauniem lands inherited as belonging to the giver of the land and from which a profit of 600 or 700 rupees was said to be derived, were granted in charity by the former rulers and possessors and cannot be made answerable for Appaya's debts. It is therefore resolved to relieve the 2d Respondent from the responsibility of the claim and thus far to modify the Lower Court's decree, as the 1st Respondent admits she should pay the Appellant ⅔ds of the amount claimed, in addition to that decreed by the Lower Court and subsequent interest, ⅔ds of the costs incurred by the Appellant in the original and appeal suits are to be paid by the 1st Respondent to the Appellant who must herself bear the remaining ⅓d; the costs incurred by the 1st Respondent in the appeal are to be borne by her and those of the 2d Respondent to be borne by the Appellant.

THE 10TH JANUARY 1857.

Appeal Suit No. 50 of 1856.

Appeal from the decision of Mr. James Wilkins, District Moonsiff of Ongole, dated 20th August 1856.

Pisupati Muttumbhotloo, Appellant, the 3d Defendant,

versus

1. Pisupati Subbaya, } Respondents, the Plaintiff,
2. Menna Cotaya, } and 1st Defendant.

1. The Plaintiff brought this suit for the recovery of both principal and interest rupees 57-3-10 from the 1st Defendant, who was said to have executed to him a deed of contract on the 24th November 1854 for rupees 54, as well as from the 2d and 3d Defendants as they caused the attachment of the grain and straw, which were held liable for the liquidation of the Plaintiff's debt; the District Moonsiff of Ongole who tried it, passed his decree relieving the 2d Defendant from liability and adjudging the 1st to pay the Plaintiff the amount claimed together with the subsequent interest, and the 3d the whole of the costs as he made no attempt

to disprove the suit: dissatisfied with this decree the 3d Defendant appealed.

2. The 3d Defendant urges in his appeal that he had failed to defend the original suit owing to unavoidable inconveniences; that after the application was presented by him to recover the amount of rauzeenamah the 1st Defendant and Respondent the Plaintiff combined together and forged the bond; that a month and 20 days after he had presented that application the Respondent instituted this suit; that the property of his debtor cannot be applied for other purposes before his rauzeenamah amount was paid; that at the time when he caused the 1st Defendant's property to be attached the Respondent though present raised no objection; that had the mortgage been true he (Respondent) would have objected and caused a note to be entered in the list of attachment; that when the 2d Defendant has presented a receipt in Court, the 1st requested by a motion to keep his attached property in charge of two other individuals which could not be made were the mortgage to the Respondent true.

3. In his answer the Respondent avers that unless his debt on the mortgage is discharged, the Appellant's debt for which there is no mortgage cannot be discharged; that there is no rule prohibiting any one from taking mortgage of the property of the rauzeenamah debtor; that he was not present when the attachment was made and that the disputed bond was fully proved.

JUDGMENT.

4. It appears from perusal of the record of this case, that the bond in dispute is not on stampt paper; that the 1st witness the writer and the 2d attesting witness are inhabitants of separate villages and not of that wherein the bond is stated to have been drawn out; they say that having been accidentally called by the Plaintiff, Respondent, while passing through the village they went to the spot and they allow they have dealings with the Plaintiff, Respondent,; further, when the property under reference was attached, neither the Respondent who claims it nor the 1st Defendant who is said to have given the bond in dispute, objected; also it is unlikely a loan should have been made by the Respondent to the 1st Defendant at a time when the 1st Defendant was made liable for the debts of the 2d Defendant and 3d Defendant, Appellant, for decrees passed prior to the date of the bond in dispute; the Respondent admitted in a kyfeut in original suit dated March 13th of 1856; an enmity of 6 years' standing existed between him and the Appellant; these causes and the 1st Defendant's confession of the Respondents' claim, throw suspicion on the document; further, it is not clear from the wording of the bond, the attached property was placed under a regular mortgage; it only states grain should

be given for its liquidation; the Plaintiff failed according to the conditions of the bond in paying even the sist, therefore the Respondents' claim is no more than that of others, and even if the document in question be a true one, still as the rauzeenamah is dated 6 years prior to that of the bond in dispute, the property of the 1st Defendant should be first held responsible for the document of the 3d agreeable to Sudr Udalut's proceedings of the 4th July 1845; the 1st Defendant's property is therefore to be made liable to satisfy the rauzeenamah of the 3d Defendant and the 3d Defendant is not to pay the original costs; the decree of the Lower Court, on these points, it is resolved to modify and Respondent is to pay the costs of appeal. The 1st Defendant having admitted the Respondents' claim that part of the Lower Court's decree allowing Respondents' claim against the 1st Defendant, is allowed to stand.

THE 15TH JANUARY 1857.

Appeal Suit No. 58 of 1856.

Appeal from the decision of Mr. James Wilkins, District Moonsiff of Ongole, dated 8th September 1856.

Pisupati China Venkatrayadu, Appellant, the 3d Defendant,

versus

1. Chunduri Venkaya, } Respondents, the Plaintiffs.
2. Do. Cotappa, }

1. This is an appeal preferred by the 3d Defendant from the decree passed by the District Moonsiff of Ongole ordering the release from attachment of a tamarind tope valued at rupees 61, which the Plaintiffs, Respondents, stated to have been planted 70 or 80 years ago by Basavana and Guranappah, the predecessors of the Plaintiffs and the 1st and 2d Defendants for charitable and public purposes, and which was attached to satisfy the decree passed in favor of Appellant, 3d Defendant, in Original Suit No. 491 of 1843 on the file of the said Moonsiff, as private property of the 1st and 2d Defendants.

2. The 3d Defendant advances in his appeal the following grounds. That had the disputed tope been devoted to charitable purposes, the villagers who deposed on Plaintiffs' behalf would have inserted the same in the list of attachment; that no such objection arose when the tope was attached, as will be seen from the deposition of his 1st witness the peon who was deputed to attach the property; that it is proved satisfactorily by his witnesses that

the 1st and 2d Defendants are appropriating it for their private purposes ; that his statement was supported by the evidence of the Plaintiffs' 4th witness ; that the Plaintiffs' witnesses who were Appellant's enemies contradicted their evidence as to the persons who planted the tope ; that his (Plaintiff's) 4th witness' evidence shews that the Plaintiffs have no right to it ; that it does not appear from the evidence to have ever been entered in the Circar accounts as a tope devoted to charitable purposes, and that the Respondents' witnesses stated that the tope is worth rupees 120, which is more than the amount claimed.

3. Respondents, the Plaintiffs, aver in their answer that although the Appellant who is rich caused the tope in dispute to be attached in the absence of the 1st and 2d Defendants and himself, when soon after he was informed of the circumstance, he presented a miscellaneous petition to the District Moonsiff to that effect ; that he brought originally this regular suit as per order passed on the above motion ; that his claim was proved by the corroborative evidence of his witnesses, and that it is not proved the tope was 1st and 2d Defendants' private property.

JUDGMENT.

4. It appears from the record in this case that the 2d witness for the 3d Defendant, Appellant, a batta peon of the district Moonsiff's Court, states he zufted the tope in dispute by request of the Appellant during the absence of the Respondents and the 1st and 2d Defendants and without asking whether the tope was assigned to charitable purposes or not. The 1st witness, not an inhabitant of the village, states when he went occasionally to gather fruit or leaves from the tope, the 1st Defendant prevented him and his evidence to the effect the 1st and 2d Defendants since 20 or 30 years have been taking the fruit from the tope, is single. The Respondents' 4th witnesses, whose evidence the Appellant states supports that of his 1st witness, merely asserts the tope was partly for charitable purposes and partly appropriated by the 1st and 2d Defendants, but if these Defendants did improperly receive for their private use the produce of a tope planted for charitable objects, this cannot render the tope liable for their debt. The Respondents' witnesses, the 1st, 2d and 3d, the Curnum and head Capus, long residents of the village, and the 3d living close to the tope in question, all state it was planted by the ancestors of the Respondents and the 1st and 2d Defendants for public charitable purposes, and as such it has been set aside and in no public accounts is it shewn it is the private property of the Defendants. The evidence of the 4th witness is corroborative of this and had it been the private property of the 1st and 2d Defendants, it is unlikely the Appellants would have allowed so long a period to

elapse after a decree had been passed against them in his favor in the year 1843 without causing its attachment. The witnesses differ as to the value of the tope and the Court cannot arrive at its correct valuation from their evidence. The decree of the Lower Court is confirmed. The Appellant to bear the costs of appeal.

THE 20TH JANUARY 1857.

Appeal Suit No. 59 of 1856.

Appeal from the decision of Mr. James Wilkins, District Moonsiff of Ongole, dated 15th September 1856.

1. Peracum Chenchoo,
2. Do. Sashoo,
3. Do. Vencatasamy,
4. Do. Appasamy,
5. Do. Ramadoo,

} Appellants, the Defendants,

versus

Peracum Codundaramadoo, Respondent, the Plaintiff.

1. This is an appeal preferred by the Defendants requesting a remission of rupees 14 together with counter interest, being additional payments out of the amount decreed by the District Moonsiff of Ongole, adjudging the Defendants to pay to the Plaintiff, rupees 40-6-0 due on a bond, and subsequent interest and costs.

2. Defendants urge in their appeal that their 1st witness, son of the Respondent, wrote the last entry of the account in which the two items of liquidations are entered as averred in their answer, and deposed to that effect; that the admission of the last entry by Respondent's son proves, that the two additional payments which were entered above were really paid by the Defendants; that although they requested the District Moonsiff to take a kyfeut upon oath from the Plaintiff about the said payments, yet, he did not do so, and that the sum of the additional payments made by them may be deducted together with the counter interest and proportionate costs out of the amount claimed.

3. Respondent avers in his answer that if the additional payments stated by the Appellants were really paid, they would have been entered in the account, which was produced by the Respondent, and which was prepared in presence of the

2d Appellant; that the payments were not at all proved by the witnesses examined on behalf of the Appellants, and that the Appellants by intrigue caused an entry to be made by the Respondent's son, leaving some space above on the cadjan, and forged the disputed payments in the space so left.

JUDGMENT.

4. It appears from this record that the bond is admitted; and that the Appellant's 1st witness, son of Respondent, states the disputed two payments were not in the account, when he entered the 6 rupees payment allowed by the Respondent, also the 2d and 3d witnesses named by the Appellants to prove the disputed payment, know nothing of it; the District Moonsiff was right in not admitting the kyfeut on oath, as proposed by the Appellants, the evidence in his favor having entirely failed; the decree of the Lower Court is confirmed, the Appellants to bear the costs of appeal.

THE 23D JANUARY 1857.

Appeal Suit No. 53 of 1856.

Appeal from the decision of Moulavee Fasseeooddeen, Principal Sudr Ameen of Nellore, dated 29th August 1856.

Battini Vencaya, Appellant, the Plaintiff,

versus

1. Damachenchoo,
2. Do. Iyvaroo,
3. Do. Lukshminursoo,
4. Do. Cotiya,

} Respondents, the Defendants.

1. Plaintiff preferred this appeal from the decree passed by the Principal Sudr Ameen dismissing his suit against the Defendants for the recovery of rupees 26-8-0, being the value of "Coru" Plaintiff's ½ share of the produce cultivated by the Defendants for fusly 1260 in 2½ gorroos part of the zufted enam land rented by the Plaintiff.

2. Plaintiff urges in his appeal that it was fully proved by his witnesses that both the parties verbally agreed, the cultivation of the disputed land should be carried on, on conditions of giving a share of the produce; that the account produced by the 11th

witness shews the land was cultivated in fuslies 1258 and 64 by giving a share of the produce; that while the Lower Court admitted that nothing was proved by Respondent's witnesses, it is not right to base its decree on a mere supposition that the land might have been cultivated for rent; that it is improbable that the land which was rented by Plaintiff purposely to derive profit, would have been tendered to the Defendants for the same amount which he is bound to pay to Circar; that it is the custom to take the practice of preceding year for the lands for which there may be no cowls and cabooliyets and that the account of produce for fusly 1258 is a sufficient proof that the land was leased out by Circar for share.

3. Respondents filed no answer.

JUDGMENT.

4. It appears from the record of this case that there is no documentary evidence to shew whether the lands were cultivated for a share of the produce as claimed or for rent as argued by the Defendants, Respondents; the evidence of the witnesses of either party also does not appear trustworthy, for they are the dependants of the Plaintiff, Appellant, and Defendants, Respondents, respectively and have given evidence for them in other suits; further, it is mere hearsay evidence they give in respect to the mode of cultivation practiced in past years; the Court therefore can arrive at no satisfactory conclusion from the evidence before it and must consequently decide the case with reference to the custom of the country and former practice; a half share of the produce is generally allowed and this enam land was cultivated for share of produce for fusly 1858, the year it was zufted, and the Circar accounts shew a half share was taken; the evidence of the Respondents' own witnesses also shews they, the Defendants, Respondents, received a half share of the produce the year it was released from attachment (1264); a money rent would have been different from the general practice had it been so rented, and a cowl to that effect should have been taken by the Defendants, Respondents; the Defendants raised no objection to the quantity or value of the produce. For the above reasons, the Court resolves to reverse the decree of the Lower Court adjudging the Defendants, Respondents, to pay the amount claimed together with costs incurred in both Courts.

THE 23D JANUARY 1856.

Appeal Suit No. 54 of 1856.

Appeal from the decision of Moulavee Fasseeooddeen, Principal Sudr Ameen of Nellore, dated 29th August 1856.

Battini Vencaya, Appellant, the Plaintiff,

versus

1. Attota Chennappa,
2. Do. Ramoodoo, } Respondents, the Defendants.

1. Plaintiff preferred this appeal from the decree of the Principal Sudr Ameen which dismissed his suit against the Defendants for the recovery of rupees 18-8-0 value of "Coru" Plaintiff's ½ share of the produce of 2 gorroos, being part of the zufted enam land which was rented by Plaintiff and cultivated by the Defendants for fusly 1260.

2. Respondents filed no answer.

3. This Plaintiff preferred an Appeal No. 53 of 1856 for his share "Coru" of produce in another part of the land in dispute in this suit, and the nature of this suit is like that of No. 53.

JUDGMENT.

4. For the reasons assigned in appeal suit 53, the decree of the Lower Court in this suit is reversed; the Defendants, Respondents, to bear the costs incurred in both Courts and to pay the amount claimed.

ZILLAH RAJAHMUNDRY.

PRESENT: R. R. COTTON, ESQ., JUDGE.

THE 31ST JANUARY 1857.

No. 109 of 1855.

Appeal from the decision of Moulavee Mahomed Ally, Moofty Sudr Ameen, dated 3d May 1855.

Tolaty Boocheelutchmamah, (Defendant,) Appellant,

versus

Bollupragadah Sutt Ummah, (Plaintiff,) Respondent.

1. This is an appeal from the decision of the Moofty Sudr Ameen.

2. The suit was instituted for the recovery of rupees 2,037-9-9, being past profits of a 4th share of the village of Gootanadeevy, and future profits, at rupees 268-3-3 per annum, the Plaintiff bases her claim upon 3 documents;

A. A kararnamah executed on 27th February 1837 by Defendant to her mother-in-law (Plaintiff's mother) Ravan Ummah, promising to give her ¼ share of the village of Gootanadeevy, when she had recovered the ½ share for which she was suing her sister-in-law (Plaintiff's sister) Sutt Ummah;

B. A will alleged to have been executed 4th March 1841 by her mother Ravan Ummah, bequeathing to her (Plaintiff) the said ¼ of the village of Gootanadeevy;

C. A kararnamah alleged to have been executed by the Defendant to her (Plaintiff) 24th August 1849 paying her 300 rupees

past profits, and agreeing to pay her ¼ share of the profits from fusly 1254 to 1261, and then to put her in possession of the said ¼ share of the village.

3. Defendant answers that the suit has been brought out of revenge at the instance of the Plaintiffs' sister Sutt Ummah, from whom, she, Defendant had obtained by a Civil action ½ share of the said village. She states that the Plaintiff has no right whatever to a share; the property belonged to her husband (deceased) Plaintiff's brother, and she, not Plaintiff, is her husband's heir; that it is true she executed a kararnamah to her mother-in-law the deceased Ravanamah to give her ¼ share of the said village *when she had recovered the ½ share from Suttanah*, but it was only for her life time; but she did not recover the ½ share till Ravanamah had been dead 4¼ years, so that Ravanamah never enjoyed any share of the village, and consequently it is absurd to believe that Ravanamah bequeathed it to Plaintiff; that Ravanamah was insane 15 days before her death, while the will filed is dated 3 days before she died; that she at the time heard of the fabrication of the will, and reported it to the Collector by an urzee dated 9th March 1841; that Plaintiff had no male issue at the time of Ravanamah's death; and that she, Defendant, is entitled to her husband's property; that the kararnamah *C* is a fabrication, and the alleged payment by her of money for past profits, is false.

4. The Moofty Sudr Ameen considering the execution of the 3 documents *A*, *B* and *C* proved, states that though Defendant says she is heiress to Ravanamah under Regulation V of 1829, and the Sudr Udalut's Circular Order, yet she cannot claim what she has alienated, i. e. given in gift to Ravanamah; that if the will *B* was fabricated, Defendant should have proved it to be so before the Collector at the time; that as Defendant was put in possession of the aforesaid village, under a rauzeenamah petition No. 205 of 1845 filed by Sutt Ummah her sister-in-law, Defendant in Suit No. 499 of 1839 with stipulations that she should enjoy the whole profits for 8 years; therefore the Plaintiff is entitled under the deeds to a ½ share of the profits, and he consequently decreed that the Defendant should pay the Plaintiff the amount sued for, together with subsequent profits and costs of suit, making over to Plaintiff the 4th share of the village; yielding an annual cist of rupees 462-6-3, Plaintiff being responsible for half the maintenance decreed to one Nursanah in Suit No. 76 of 1847 out of the profits of the said village.

5. Defendant dissatisfied appeals, and urges that she fully proved the points given her; and that the deceased Ravanamah was insane for some time previous to her death; and that the Plaintiff's witnesses themselves depose to her illness before her death, and that her having executed a will is incredible. She repeats that the

suit has been brought against her at the instigation of Sutt Ummah from whom she had recovered ½ share of the village by Civil action No. 499 of 1839. She objects to the evidence given by the witnesses in support of the document *A*, and states that in regard to *C*, the 7th witness denies all knowledge of its origin; that 8th witness is Plaintiff's sister's servant; that 9th witness is not the Curnum of Goottanadeevy village, and could not therefore tell what the collections were, and that therefore the amount of profits has not been proved; that the stamp on which *C* is written purports to have been purchased for her (Appellant) by a village servant, but he has not been examined; that the Sudr Udalut have ruled in their proceedings dated 18th September 1848, and their decision in No. 12 of 1818, that the widow of the last deceased person of a family, is to be the legal heir and that the Sudr Udalut had ruled in 1849 and 1850 that the widows and not mothers, of deceased minor sons, are their heirs; she therefore prays reversal of the Lower Court's decree.

6. Plaintiff, Respondent, answers, that it is shewn that the Appellant by kararnamah *B*, filed in Suit No. 499 of 1839 clearly agreed to allow Ravanamah to alienate a 4th share of the village to any one she might like, and then executed to her the document *A* filed by her, Respondent. She further states that the authorities quoted by Appellant, are not applicable to the present case; that the deceased Ravanamah was not only supported by her Respondent, but was also indebted to her, for certain jewels; that in accordance with the terms of the document *A*, Ravanamah executed the will *B* bequeathing her ¼ share of the village. She therefore prays the original decree may be confirmed.

JUDGMENT.

7. The Acting Civil Judge has given the record his best attention, and considers that though much has been pleaded on both sides, yet that the real question is, are the deeds *A*, *B* and *C*, valid? and who is heir to Ravanamah? The case is simply this, Ravanamah, the widowed mother of Defendant's husband, one Sutt Ummah, Plaintiff, Respondent, and another daughter Soobamah, sold to the said Sutt Ummah, the village of Gootanadeevy; she subsequently purchased back ½ share of it, and enjoyed it some time, but Sutt Ummah her daughter then with held her share; Ravanamah not wishing to sue her own daughter, she gave over her papers &c. to Defendant her daughter-in-law (son's wife) and desired her to sue her for the ½ share and kararnamahs were then exchanged, of which *A*, is one and *B*, filed in that Suit No. 499 of 1839, the other, by which they each agreed to enjoy the ½ share equally, that is ¼ share each, *when they got it*; it was however agreed that Ravanamah might do what she liked with the ¼ share; Ravanamah died on the 7th March 1841, and Plaintiff files a will *B*, which

she states was executed by her 3 days previous, by which the said ¼ share of the village is bequeathed to her, Plaintiff. These two documents however are invalid ; *A*, purports to give deceased Ravanamah ¼ share of the village, but it was not then in the possession of the would-be donor, and was not recovered till 4¼ years after Ravanamah's death; consequently Ravanamah was never in possession, and a gift without possession obtained, is invalid ; to complete a gift there must be possession, for acceptance is necessary as well as bestowal. Promise alone without acceptance does not suffice (Strange's Manual pp. 32, 177, 178). Then again by the death of Ravanamah, the Defendant, as heir according to the ruling of the Sudr Udalut quoted by Appellant (she being the widow of last, and only son of deceased Ravanamah her daughters *then* having no male issue) could claim her entire property, and the ½ share of the village is included in it. Ravanamah never having had possession of the ¼ share could not alienate it inasmuch as she had it not, had she obtained possession and *given it away*, the Respondent's claim to it might have been proved, provided she had actually received possession ; but Ravanamah had no power to *will* it away ; *her property* at the time of her death, became her heirs, and as such Defendant would have been entitled to it ; the document *B*, is therefore, leaving apart the suspicion attaching to its being executed 3 days before death, when it is deposed Ravanamah was insane, invalid, first because she had not possession of the property she bequeath, and secondly because she had no right to bequeath by will the property to Plaintiff, Respondent; the only point to be discussed, therefore, is the kararnamah *C*, which purports to have been executed by Appellant to Respondent, after the former had paid 300 rupees, and in which, she promises to give ¼ share of the profits, and ¼ share of the village in fusly 1261. In the first place the Defendant, Appellant, denies its execution, and the evidence in support of it is unsatisfactory and suspicious ; it was executed—why, does not appear—at a stranger's house at Gootanadeevy 2 coss distance from Neelapully, and 3 coss from Cottapully, the respective villages of Plaintiff, Respondent, and Defendant, Appellant, and where it is said the Appellant, Defendant, paid 300 rupees bringing it from a room ; that she would have such a sum about her away from her village is most improbable, or that she would have executed such a document away from home there being no apparent necessity for her doing so. As shewn above the Plaintiff, Respondent, has no right or title to the ¼ share from the documents *A* and *B* ; her present claim therefore rests on the kararnamah *C*, which after all is nothing more than a promise to *give* her so much ; it is merely a gift, nothing is pretended to have been given in consideration, nor does the Plaintiff, Appellant, pretend she ever was in possession in any way, unless she means to say that the alleged payment of 300 rupees from the profits can be said to give her a

claim as possession, but this point has not been sufficiently proved; and the Acting Civil Judge therefore considers that her title to the property is invalidated, because, as above quoted, a gift without possession is invalid, and to complete a gift there must be possession; he therefore decrees that the decision of the Lower Court be reversed, and that the Plaintiff's suit be dismissed, Plaintiff Respondent, paying all costs.

THE 28TH JANUARY 1857.

No. 7 of 1856.

Appeal from the decision of Sauminany Venkatadry Naidoo, District Moonsiff of Peddapoor, dated 24th August 1855.

Chelloory Chena Vencatroydoo, (Defendant,) Appellant,

versus

Vuttycooty Venkatroydoo, (Plaintiff,) Respondent.

1. This is an appeal from the decision of the District Moonsiff of Peddapoor.

2. The suit was instituted for the recovery of 102 rupees 12 annas principal and interest, on a written agreement together with costs.

3. The Plaintiff states, that on account of a balance for dealings of 47½ rupees and a loan of 27½ rupees, and future interest, 35 rupees, the Defendant agreed to give to him, the enjoyment of certain land, producing 10 rupees cist a year, from 1846 to 1849; that after 2 years, 1849 and 1850, the Defendant interfered; that he therefore now sues for 75 rupees, less the 20 rupees cist received for the 2 years, and interest 47 rupees 12 annas.

4. The Defendant admits the execution of the agreement, urging, however, that he was forced into it, by pressing difficulties; that for a previous debt, he had given up the land, for 11 years up to 1848, calculating the cist to be 10 rupees a year, but that in 1845, owing to the opening of irrigation channels, the cist had been raised to 25 rupees on the land; that consequently the Plaintiff, has fully repaid himself, and is in fact indebted to him, Defendant.

5. The written agreement cowle *A* was filed.

6. The District Moonsiff states, that no witnesses were

cted on either side, and that Plaintiff by Motion No. 417 of 1855, represented his inability to prove what the land in question produced, and begged the suit might be disposed of on the pleadings; that as the Defendant had failed to produce the public records; that in miscellaneous petition 1,648 of 1855, he stated he would; he could only judge of the respective statements, by the cowle *A* filed, from which it would appear that 10 rupees was the cist of the land, and such being the case, he gave judgment for the Plaintiff, with costs.

7. The Defendant dissatisfied appeals, alleging that he produced his evidence the same day the District Moonsiff's decree was passed, but that the District Moonsiff refused to receive it; he files the records with his appeal petition, and urges that they will conclusively (being Government records) substantiate his statements; that the cist was 25 rupees, and that he is not indebted to the Plaintiff, Respondent.

JUDGMENT.

8. As it does not appear that the delay in producing these documents from the Collector's office, is attributable to the Appellant, and as it seems the real merits of the case, cannot be learnt without them, the Acting Civil Judge resolves to remand the suit to the District Moonsiff, who after a consideration of the documents now produced will pass a decision de novo.

THE 31ST JANUARY 1857.

No. 10 of 1856.

Appeal from the decision of Moulavee Mahomed Ally, Moofty Sudr Ameen, dated 26th September 1855.

1. Gareegepauty Jugguppah,
2. Do. Veeranah, his undivided brother, } (Defendants,) Appellants,

versus

Padapurty Lutchanah, (Plaintiff,) Respondent.

1. This is an appeal from the decision of the Moofty Sudr Ameen.

2. The suit was instituted for the recovery of rupees 1,547-11-6, the value of 128 candies, 19 tooms and 10 manikas of paddy on verbal agreement.

3. The Plaintiff states that the Defendant's father, on account of money advanced, 118 rupees, and old debts, rupees 371-15-0, executed to him, on stampt paper, a deed on the 7th July 1839, for rupees 489-15-0, agreeing to pay 50 rupees a year on the Pongul feast day, and interest, at 12 per cent; that it was stipulated all payments should be endorsed; that Defendants' father paid on the 3d April 1843, 25 rupees and died in 1850; that subsequently, the Defendant paid in 1851, 35 rupees; that in January 1853, he demanded of Defendant, the balance due, which, on calculating, was found to be rupees 429-15-0 principal, and 827 rupees odd, interest; that on Defendant's stating his inability to pay, the excess over equal interest was struck off, bringing the amount to rupees 857-14-0; that Defendant promised to pay him in grain, namely, 228 candies, 19 tooms, and 10 manikums, at the then current rate of 6 rupees 10 annas 8 pice per candy; that he has not fulfilled his promise, and that he consequently sues him for the grain, which, at the present rate, is worth rupees 1,547-11-6.

4. The Defendant denied that the deed was ever executed by his father; that either he or his father ever paid the money, alleged; that Plaintiff ever demanded the debt of him, and that he ever gave any such promise as alleged in the plaint; and he urges that, had he done so, a voucher would have been taken from him; that although it is stipulated in the deed that 50 rupees, shall be paid every year, with interest, yet the first and only payment alleged to have been made, is for the small sum of 25 rupees 45 months, 10 days after execution of the deed; that his father was well ablé to pay the money, if it had been demanded; that it is not likely, with a balance due to him of 371 rupees, Plaintiff would lend 118 rupees more; that his father did not die for 7 years after the alleged instalment was paid, during which time, the Plaintiff remained quiet; that had he, Defendant, agreed to pay 859-14-0, or grain, Plaintiff would doubtless have got some written agreement from him; that it is evident the endorsements on the deed have been made to bring it within the statute of limitations; that the Plaintiff has been instigated to bring the suit by one Venkanah his enemy.

5. The Plaintiff filed the deed in question *A*; 10 witnesses were examined for the Plaintiff, and 9 for the 1st Defendant.

6. The Moofty Sudr Ameen states that the evidence of the 7th, 8th, 9th and 10th witnesses to the Defendants' promise to pay grain, in the absence of any document, is incredible; that the institution of the suit for the value of grain on the deed, cannot be admitted; that from the evidence of the 1st, 2d, 3d, 4th, 5th and 6th witnesses, the execution of the deed, and the payment of the money is proved; but that as the Plaintiff has delayed bringing his suit so long, he disallows interest, from the date of the instal-

ments being paid, and decrees accordingly and for proportionate costs.

7. The 1st Defendant dissatisfied appeals and urges;

i. That the Moofty Sudr Ameen has admitted that the evidence of the 7th, 8th, 9th and 10th witnesses is incredible, and he has moreover disallowed interest;

ii. That the Court was bound to discover whether the evidence of the other witnesses was true or not, and that it was irregular to decree the Plaintiff part of his claim, and disallow the rest;

iii. That the Plaintiff's witnesses do not reside in his, Plaintiff's, village.

8. The Plaintiff in answer urges that he intended likewise to appeal for the amount disallowed, as the Moofty Sudr Ameen had allowed that his claim had been proved; that the fact of the agreement to pay grain, being a verbal one, is insufficient to falsify the evidence of his 7th, 8th, 9th and 10th witnesses; that the Circular Order Sudr Udalut 28th September 1848 sanctions the awarding of interest for any period; that *all* of his witnesses are not resident in other villages; that as the Appellant was a minor when the deed was executed, he could not know whether his father executed it, or not; he finally prays that, the Court will decree him the amount sued for.

JUDGMENT.

9. The Acting Civil Judge has given the record his best consideration; the deed said to have been executed by Defendant's father merely bears a mark; the writer (1st witness) of it lives 2 coss distant from the village where it was executed, his evidence is very minute and equally incredible. One of the attesting witnesses (2d witness) also deposed to the execution of the deed and to the demand made in 1843. It is evident however, from the deed itself, that his name has been lately entered; the ink is quite fresh, and totally different from that used by the other attesting witness and writer; the 2d attesting witness was not examined. It was executed on 1st July 1839, and the stipulations entered in it, are clear and positive. 50 rupees to be paid on the Pongul feast day of each year, and 12 per cent interest, yet, there is no evidence that a cash was paid, or demanded, for nearly 4 years, when the paltry sum of 25 rupees is alleged to have been paid; the endorsement is made by one Venkatachellum brother 3d witness, the said Venkatachellum is not forthcoming, and the writing appears of recent date; the amount due by the deed at that time, was about 700 rupees yet it does not appear that, any further sum

was demanded then, or subsequently, of Defendant's father, who did not die for 7 years after in 1850. On the 1st July 1851, or just within 12 years after execution, the Defendant is alleged to have paid 35 rupees (the amount due on the deed then being about 1,100 rupees) which was endorsed on the bond by the 6th witness; the Defendant positively denies having ever paid the money, and it is incredible, that Plaintiff would have been satisfied with such a trifle; equally incredible is the story relating to the promise of grain, and the fact that, if the money was really due, the Plaintiff would not have taken some stronger and earlier measures to enforce payment. The Acting Civil Judge looks with the greatest suspicion on the deed itself, the evidence to its execution being most unsatisfactory; he cannot hower pronounce it to be a forgery, but it is evident, its terms have never been acted up to, and that 2 petty sums have been endorsed by third parties as having been paid, with a view to bringing it within the statute of limitations; the Acting Civil Judge under these circumstances being of opinion that the Plaintiff has entirely failed to prove his claim, decrees that the decision of the Lower Court be reversed, and that the suit be dismissed, the Plaintiff, Respondent, paying all costs in original and appeal.

THE 28TH JANUARY 1857.

No. 15 of 1856.

Appeal from the decision of Mr. Samuel Marcar, District Moonsiff of Cocanada, dated 17th September 1855.

Ballum Lutchoommah, (Defendant,) Appellant,

versus

Saunipeeny Chinnummee for her minor son Chittiah, } (Plaintiff,) Respondent.

1. This is an appeal from the decision of the District Moonsiff of Cocanada.

2. The suit was instituted to recover 98 rupees 10 annas 8 pice, principal and interest on a stampt deed.

3. The Plaintiff states that one Amanah deceased, the adoptive mother-in-law of Defendant's deceased husband having borro wed of her, Plaintiff's husband (deceased) 30 rupees to repair her house which had been burnt, and also 20 rupees for her cur-

rent expenses, executed on stampt paper to her (Plaintiff's) husband, a deed mortgaging a portion of the said house to him, for the money, which was to be repaid in 4 years, failing which, Plaintiff's husband was to buy it, at a fair price, fixed by respectable inhabitants; having failed to pay the money, the said Amanah, was about to sell the house when she died; the Plaintiff (her husband having previously died) was then in possession. On the death of Amanah, the Defendant set herself forward as her heir, obtained a certificate, and in Suit No. 107 of 1854 Cocanada District Moonsiff Court's file, sued the Plaintiff for possession, and obtained it, as the deed now sued on was merely a mortgage deed, not a deed of sale which could not therefore affect the ownership of the house, for the amount due on the deed the Plaintiff was referred to a separate suit, and she now brings it against the Defendant as heir to the deceased Amanah.

4. The Defendant denied the genuineness of the deed, and the right of Amanah to execute it.

5. The District Moonsiff on a consideration of the pleadings and deed filed, as also the record in Original Suit No. 107 of 1854, Cocanada District Moonsiff Court's file, was of opinion, that the deed was fully proved by the Plaintiff, as Defendant in the abovementioned suit, and that as the money was lent to repair the said Amanah's house which had been burnt, the mortgaging of the house on conditions, was legitimate; that the Defendant having ousted Plaintiff, and taken possession of the house, as heir to the deceased Amanah, she must be responsible also for her debts, and he therefore decreed that she should pay the Plaintiff's demand, and all costs.

6. The Defendant dissatisfied appeals and urges, that she is not responsible for the debt, as she did not obtain a certificate as heir to Amanah, and inherited none of her property; that it has not been proved; that she inherited property to the amount sued for, and that therefore under Circular Order Sudr Udalut No. 73, she is not responsible for the present demand.

JUDGMENT.

7. The Acting Civil Judge has given the case his best attention; by a reference to Miscellaneous Petition No. 378 of 1853, presented by the Defendant to the Civil Court, it is apparent that she claimed the house as heir to the deceased Amanah, and that she, as her heir, sued the Plaintiff in Original Suit No. 107 of 1853, and ousted her from Amanah's house, in which Plaintiff then was, having been put in possession by Amanah as security for the amount of the debt, the subject of the present suit; the plea there-

fore set forth by the Appellant that she did not inherit Amanah's property is false; the Acting Civil Judge, considering the decree of the Lower Court just, confirms it with all costs, and further resolves to fine the Appellant 5 rupees under Section IX, Regulation II of 1802, for stating a falsehood in her pleadings, and prefering a vexatious, frivolous and groundless appeal.

THE 28TH JANUARY 1857.

No. 13 of 1857.

Appeal from the decision of Sauminany Rungiah Naidoo, District Moonsiff of Nursapoor, dated 8th December 1856.

Catacum Naugunnah, (Plaintiff,) Appellant,

versus

1. Supparapoo Veerappah,
2. Samootum Naugooloo, } (Defendants,) Respondents.

1. This is an appeal from the decision of the District Moonsiff of Nursapoor.

2. The suit was instituted for the recovery of 24 rupees alleged to be due as promised remuneration for services performed.

3. The Plaintiff states, that the Defendants promised to pay him 25 rupees, if he would assist their relative Casa Gavaramee, in bringing and conducting a suit before the Subordinate Court; that they paid him 1 rupee's worth of grain, but refused to pay the rest, though the suit has been amicably disposed of by ranzeenamah.

4. The Defendants deny that they ever made the promise; they state that the Plaintiff received 1 rupee in paddy, for some slight assistance, he had rendered, to the said Gavaramah.

5. The District Moonsiff dismissed Plaintiff's claim with all costs, the evidence of the witnesses examined on his behalf, in support of it being contradictory, and suspicious, and in the absence of any document, altogether insufficient to establish it.

6. The Plaintiff dissatisfied, appeals urging, that his witnesses proved, that he had assisted Gavaramah, and that the Defendant had promised to pay him 25 rupees; that as he trusted them, he took no voucher from them.

JUDGMENT.

7. On a perusal of the pleadings and record, the Acting Civil Judge sees no cause for calling on the Respondent to answer ; he quite coincides with the District Moonsiff that the Appellant has failed to establish his claim, and that the evidence of the witnesses owing to its contradictory nature, is totally insufficient, to establish, in the absence of any document the Plaintiff's claim, and he therefore decrees that the Lower Court's decree be confirmed and that the Plaintiff do pay all costs.

THE 28TH JANUARY 1857.

No. 16 of 1857.

Appeal from the decision of Moulavee Mahomed Ally, Moofty Sudr Ameen, dated 23d December 1856.

Gareegipauty Ramacroostamah and 68 others, (Defendants,) } (1st Defendant,) Appellants,

versus

Goorumbhagavatoola Gooruppah, (Plaintiff,) Respondent.

1. This is an appeal from the decision of the Moofty Sudr Ameen.

2. The suit was instituted to recover 10 rupees, alleged to be due to Plaintiff, as his share of certain alms ; the Plaintiff states, that he is a brahmin, and as such entitled to a share (calculated at 10 rupees) of certain sums, paid in charity to the brahmins by the banians, on the occasion of their marriages &c. and the whole of which he states, was appropriated by the 1st Defendant and 68 other Defendants. The Defendants denied the Plaintiff's claim.

3. The Mooty Sudr Ameen argues, that as the statement of the Plaintiff, to the effect that 1st Defendant had 381 rupees for distribution, has not been denied, it must be considered true ; that it is shewn by the 4 lists produced by the Plaintiff's witnesses, that his father was one of those, who benefited by the fees, and that as these lists have not been proved false, by the Defendants, their assertion, that he is not entitled to share, is incorrect, and that he, consequently decrees, that the 1st Defendant do pay Plaintiff 5 rupees from the alms, with all costs.

4. 1st Defendant dissatisfied appeals, and pleads in the first

place, that the money paid is deposited with several brahmins, and not with him alone, which the Plaintiff's own witnesses proved, and also that there was no money in his hands after the late distribution ; that before judgment was given against him, it was most essential that the 1st point, namely, that Plaintiff should prove he had the money, should be proved, and that the statement of the Moofty Sudr Ameen, that it was inmaterial, is clearly erroneous, as the whole suit depends on it ; that Plaintiff did not produce the puttahs he spoke of, to shew that the banians paid so much to the brahmins ; that the lists produced by Plaintiff's wituessses are useless, not being authenticated in any way, the author of them being unknown, and they were not signed by any of the Defendants ; that without seeing the original lists, the Moofty Sudr Ameen could not decide, whether the Plaintiff is entitled to share or not ; that the 3d point given to Plaintiff to prove, namely, the demand, has not been proved ; that when the suit was first instituted it was referred to punchayetdars, who dismissed it, as Plaintiff filed no documents ; that on its being again referred by the Civil Court, he was merely examined, but no points were given him to prove, and he therefore cited no witnesses ; that the Plaintiff's own witnesses prove that half his claim was false.

JUDGMENT.

5. The Acting Civil Judge has given the case his best consideration, and being of opinion that the original Plaintiff has altogether failed to prove his title to the money claimed, or that it was paid to the Defendants on his account, resolves to reverse the decision of the Lower Court, and to decree that the Plaintiff's suit be dismissed, with all costs in original and appeal.

THE 30TH JANUARY 1857.

No. 17 of 1857.

Appeal from the decision of Sauminany Vencatadry Naidoo, District Moonsiff of Rajahmundry, dated 23d December 1856.

Wuddeerauze Raumiah, (Defendant,) Appellant,

versus

Wuddeerauze Vencapah, (Plaintiff,) Respondent.

1. This is an appeal from the decision of the Rajahmundry District Moonsiff.

2. The suit was instituted by the Plaintiff, against her adopted son for maintenance, at the rate of 3 rupees per month.

3. The Defendant admitted his adoption, but alleged his inability to provide regular maintenance, to his adoptive mother, who he alleges, is well to do, having considerable property, while he subsists merely on monthly pay, which is not more than sufficient to provide for himself and wife.

4. The District Moonsiff, having ascertained, that the Defendant was as a goomastah, in the Public Works Department, drawing 12 rupees per month, and that he was adopted by the Plaintiff, considered further evidence unnecessary, and decreed that he should pay Plaintiff maintenance, at the rate of 2 rupees per month, and all the costs in the suit.

5. Defendant dissatisfied appeals, urging that his employment is not permanent ; that his pay as a goomastah, is not more than sufficient to cover his expenses ; that the Plaintiff, Respondent, has 4 or 5,000 rupees ready money, and lends money ; that he set forth this, in his original answer, but that the Moonsiff without recording points, or examining witnesses, decreed in favor of the Plaintiff.

JUDGMENT.

6. The Acting Civil Judge, on a consideration of the case, is of opinion, that the District Moonsiff was bound to investigate the truth of the Appellant's statement, and to give them due weight before passing a decision against him ; the Appellant

urges that his adoptive mother is a wealthy woman, and does not require maintenance from him, and she herself states, that she not only supported him 20 years, but paid money for him before he got his present employment, from which it may be presumed, that she is not so destitute, as to require maintenance ; under any circumstance the order for maintenance which is founded solely on the Appellant's own admission, that he receives so much pay a month, should have been restricted to the period he was in the receipt of such pay. From a perusal of the record, the Acting Civil Judge has reason to believe, that the real merits of the case, can only be ascertained by a thorough investigation into the allegations set forth in the pleadings, and he therefore resolves to remand the suit to the District Moonsiff, who after recording points, and examining witnesses, will pass a decision de novo.

ZILLAH TELLICHERRY.

PRESENT: R. W. CHATFIELD, ESQ., JUDGE.

THE 3D JANUARY 1857.

Appeal Suit No. 264 of 1856.

Appeal from the decision of Mahomed Hoossain, Principal Sudr Ameen of Tellicherry, dated 17th March 1856.

Kittinagatha Oonachun, (3d Defendant,) Appellant.

Pomanichindeagatha Coonjee Pokur, (Plaintiff,)
Kittinagatha Ramen, (1st Defendant,) } Respondent.

1. The plaint sets forth that the deceased Oony the elder brother of 1st, father of 2d, and younger brother of 3d Defendant, having obtained the abkarry contract and borrowed 1,250 rupees from Plaintiff, granted, on 23d Meenom 1028 (4th April 1853) a bond for the same, in the name of 4th Defendant, mortgaging as security, 3 parambas and 3 houses with their title deeds. Subsequently, Oony, together with the 1st and 2d Defendants assenting to the terms of the prior engagement, borrowed a further sum of rupees 1,000, and wrote a bond on 17th Mithoomun 1028 (29th June 1853) mortgaging two other gardens as collateral security. Oony having died without cancelling the debts, the 3d Defendant obtained a certificate of succession, and the other Defendants refuse to make a settlement. Prays therefore recovery of the entire amount with full interest to date of payment.

2. 3d Defendant answers that he is the elder brother of Oony who had no right or title to dispose of tarwaad property; that with exception of paramba 2, which belongs to 2d Defendant, Oony could not alienate the others without his consent and participation.

3. 4th Defendant answers agreeing with the plaint.

4. The Principal Sudr Ameen in his decree dated 17th March of the present year, observes that from the evidence it is clear Oony himself acquired all the mortgaged property, which is accordingly to be made over to Plaintiff with any other that may be necessary for the satisfaction of his debt.

5. Against this decree 3d Defendant appeals on the ground that the property was tarwaad, and that according to the practices of Malabar, all the heirs to it ought to have signed the documents which without this formality, are irregular and useless as regards the family estate.

6. Respondent answers supporting his claim by his previous arguments.

JUDGMENT.

7. The argument advanced against this claim by Appellant rests on the supposition of the mortgaged property being a family estate, and inalienable without the sanction and participation of the heirs. The transactions may be taken for granted as they are too well proved to be so much as denied. The Appellant has utterly failed to prove his position of the property being tarwaad, the contrary having been satisfactorily shewn to have been the case. The deceased Oony himself having acquired all the property he possessed was, by the undeniable customs of the country, fully entitled to deal with it according to his own unfettered inclination; and even if he had not this authority the 2d document, being a joint production of himself and heirs, would give all the force required. The certificate granted to Appellant merely authorises his administering to his brother's estate by the recovery of outstanding debts &c.

8. Original decree confirmed with further costs of appeal.

THE 3D JANUARY 1857.

Appeal Suit No. 279 of 1856.

Appeal from the decision of Mahomed Hoossain, Principal Sudr Ameen of Tellicherry, dated 17th March 1856.

Kettinagatha Manikum, (2d Defendant,) Appellant,

By Vakeel Kellun.

1. Pomanichindiagatha Coonjee Pokur, } Plaintiff,
2. Chowacaren Orkattery Moideen Cooty, } 4th Deft., } Respondents.

1. The plaint sets forth that the deceased Oony the elder brother of 1st, father of 2d, and younger brother of 3d Defendant having obtained the abkarry contract and borrowed 1,250 rupees from Plaintiff granted, on 23d Meenom 1028 (4th April 1853) a bond for the same, in the name of 4th Defendant, mortgaging, as security, 3 parambas and 3 houses with their title deeds. Subsequently Oony, together with the 1st and 2d Defendants, assenting to the terms of the prior engagement, borrowed a further sum of 1,000 rupees, and wrote a bond on 17th Mithonum 1028 (29th June 1853) mortgaging two other gardens as collateral security. Oony having died without cancelling the debts, the 3d Defendant obtained a certificate of succession, and the other Defendants refuse to make a settlement. Prays therefore recoovery of the entire amount with full interest to date of payment.

2. 3d Defendant answers that he is the elder brother of Oony who had no right or title to dispose of tarwaad property; that with exception of paramba 2, which belongs to 2d Defendant, Oony could not alienate the others without his consent and participation

3. Fourth Defendant answers agreeing with the plaint.

4. The Principal Sudr Ameen in his decree, dated 17th March of the present year, observes that from the evidence it is clear Oony himself acquired on all the mortgaged property, which is accordingly to be made over to Plaintiff with any other that may be necessary for the satisfaction of his debt.

5. Second Defendant appeals against that portion of the original decree which makes her garden and house (No. 2) liable,

it having been, she asserts, purchased by herself, and a Cirkar sunnud obtained for the same in her own name.

6. Respondent answers by denying the above and asserts that Oony effected the purchase in the name of his daughter.

JUDGMENT.

7. The plea of Appellant is that her garden and house (No. 2) cannot be alienated for her deceased father's debt, and if there had been only the 1st mortgage deed, the Court would have considered the argument a good and sufficient one, but the 2d, with Appellant's signature, agrees in the terms of the 1st, and so legalises what might have otherwise been irregular from the omission of her consent. Such being the case, the Court is compelled to hold the paramba and house (No. 2) liable with the other property, and must affirm the original decree with costs of appeal.

THE 15TH JANUARY 1857.

Appeal Suit No. 219 of 1856.

Appeal from the decision of Moulavee Syed Mahomed Ghous, Moofty Sudr Ameen of Tellicherry, dated 11th March 1856.

Issavilly, (Plaintiff,) Appellant,

By Vakeel Sheshien.

1. Rajavilly,..... (1st Defendant,)
2. His brother Lateef,.. (2d Deft.,)
3. His sister Hayatty,... (3d do.) Respondents.
4. Dayamboo, daughter of Moorally,..... (4th Deft.,)

1. This is an appeal in formâ pauperis from the decree of the Moofty Sudr Ameen dismissing the Appellant's claim to a division of his father's property and equal participation in a land acquired on mortgage by Appellant and 1st Respondent.

2. The Appellant sued 1st Respondent and others for recovery of rupees 1,544-7-3, his share and interest in his father's and other property, contending that there was ample evidence to prove his father's acquisition and long tenure of the family estate, as well as his own especial transaction in conjunction with 1st

Respondent in the acquisition of a rice land called Cherrichalla in the talook of Cherikal.

3. 1st Respondent answers by denying the Appellant's claim to any share in the rice land, said to have been acquired by their united funds, but really obtained at his (Respondent's) sole expense ; that the other property is his own acquisition or inherited from his mother, all being entered and secured in their individual or joint names, and that the Appellant's assertions of having remitted money from Bombay in view to secure the mortgage of the rice land were discredited in the former suits instituted specially to substantiate that single point.

4. 2d Respondent answers in support of the appeal and to prove his own claim to a share in his father's property.

JUDGMENT.

5. These claims have been the subject of sundry suits. Original Suit No. 92 of 1849 was instituted for recovery of produce for two years of the rice land said to have jointly obtained on kanom mortgage on 7th December 1846. A decree was passed allowing a small portion of the claim, and this led to appeal in No. 231 of 1851 when the case was remanded for further investigation and decision de novo. The decree was accordingly revised and Plaintiff (this Appellant) adjudged a moiety of the land with half profits for 7 years. This led to appeals by both parties under Nos. 158 and 159 of 1854, when the Civil Judge decided that an entirely fresh action must be instituted to settle the question of inheritance as it " appears the parties had " been living at the time of the transaction in a state of friendly " union, consequent on their possession of the undivided estate " of their deceased father, and so acquired the joint interest in " dispute."

6. This has led to the present action in which the Moofty Sudr Ameen disallows the hereditary claim for want of sufficient proof, and all the documents and title deeds being in the name of the Respondent and his mother, and as for the mortgage claim on the rice land (which was previously allowed), although the bond is in the names of Appellant and 1st Respondent, he seems now inclined to think the entire transaction was effected by the latter without any assistance from the former.

7. The Acting Civil Judge, after a careful perusal of all the evidence, concurs in the opinion expressed by the Moofty Sudr Ameen as regards the claim advanced to a share in the paternal property, but entirely differs in regard to the share in the mortgage transaction, which is quite distinct and in no manner

influenced by the former consideration. As regards the paternal estate it will be enough to observe that the father went to Surat more than 30 years since and his property, if he possessed any, has been taken possession of and the title deeds secured by and in the name of 1st Respondent and his mother. To authorize any claim on such mere assertions as are adduced by Appellant to prove his right to share in what he terms his father's estate, without the clearest evidence of the nature and extent of the estate, would go far to unsettle the security of property. But it is very different in regard to the single land acquired by the joint means of the parties in 1846. The bond, which is undisputed, is in their joint names, and when the land was placed under attachment it was released by the parties presenting in 1847 a joint petition asserting their mutual interests in it. The Respondent declares the entire payment was made by him alone, and, if so, he ought to have taken measures to secure his personal interests, but the Court cannot cancel the terms of a deed on the verbal statement of an interested party.

8. The original decree is therefore modified and Appellant awarded a moiety of the claim on rice land No. 1 with the arrears of rent from the date of acquisition in 1846, and as the Respondent has manifestly attempted to defraud the Appellant of his undoubted rights, it is only fair he should bear all the costs of suits consequent on his conduct.

THE 20TH JANUARY 1857.

Appeal Suit No. 152 of 1855.

Appeal from the decision of Mr. Francis Paul Pereirà, District Moonsiff of Tellicherry, dated 15th June 1855.

Poolaycooddy Chatoo Numbiar, (1st Defendant,) Appellant.

Parambatha Amboo Menon, (Plaintiff,) Respondent.

By Vakeel Kandotha Coonhy Krishna Nair.

1. This is an appeal from the revised decision of the Tellicherry Moonsiff affirming Respondent's claim on certain rice fields &c.

2. Plaintiff stated that in Koombom 1027 (March 1852) he acquired the jenmum right of 3 rice lands yielding an annual produce of 325 edungalies, with a yenuck to and deed of release from

the 1st Defendant in the same year consenting to relinquish the land in a settlement of his kanom claim; that having since refused to abide by the terms of his stipulation he (Plaintiff) sues for recovery of the land with arrears of rent, costs of suit and customary interest on both items.

3. Defendant allowed the case to proceed by default.

4. In his decree of 8th September 1853 the Moonsiff considered Plaintiff had fully substantiated his claim and decided according to the prayer of his petition.

5. First Defendant then appealed and the Principal Sudr Ameen remanded the suit for further investigation.

6. The object of this appeal was to prove his jenmum right in opposition to that of Plaintiff, and for this purpose he produced an original jenmum deed and declared his title was allowed by the Cirkar by his name having, for many years, been entered as jenmee in the revenue accounts.

7. The Moonsiff in his revised decree of 15th June 1855 sustained his former award, and gave strong reasons for considering the document produced by Defendant a forgery and the evidence of his witnesses most suspicious.

8. From this revised decision the 1st Defendant again appeals by questioning the Moonsiff's arguments and reiterating his previous assertions in proof of his deed and title.

JUDGMENT.

9. After a careful perusal of the proceedings in this case, the Acting Civil Judge sees reason to concur with the Moonsiff in affirming the original claim and considers the evidence adduced in opposition to it highly suspicious and not deserving any credit.

10. The Plaintiff produces all the necessary documents to support his proprietary title and Defendant most strangely allows the case to proceed exparte. Eventually, however, he appeals and produces a deed written in his own name instead of the name of the former owner, and by his own relatives instead of impartial parties, without the corresponding documentary evidence of kanom claims which are most unaccountably in Plaintiff's possession when, by all the best established rules of the country, they ought, and, if his title was true, must have been in 1st Defendant's hands. The Moonsiff has shewn that the writing of this deed of sale is more recent than the cadjan itself and that the letters are suspiciously formed wherever age had partially affected the cadjan and

made it so tender as to render pressure difficult. The witnesses moreover speak with a promptitude and decision on minute subjects occurring upwards of 20 years since, hardly to be expected on events of the highest interest, and certainly not on such a trivial affair as the present; and if the Appellant had any thing resembling a title when this suit was originally instituted it is impossible to suppose he would have run the risk of losing or weakening it by neglecting to defend it in person or by a Vakeel.

11. The Court concurs therefore in the original decree which it confirms with all costs against Appellant.

THE 22D JANUARY 1857.

Appeal Suit No. 176 of 1855.

Appeal from the decision of Moulavee Syed Mahomed Ghous, Moofty Sudr Ameen of Tellicherry, dated 30th April 1855.

1. Moorcote Bapoo, (1st Defendant,)
2. Cannarum,..... (4th ditto)
3. Pokun,..... (5th ditto)

} Appellants.

By Vakeel Kellan.

Chowacaren Bapun, (Plaintiff,) Respondent.

1. Appealing from the decree passed by the Moofty Sudr Ameen affirming Plaintiff's claim to a garden and house secured to him on a mortgage deed executed by the late proprietor, Tolen.

2. Plaintiff stated that the deceased Tolen, the karnaven of Defendants from 1st to 11th granted a mortgage deed on his paramba in 1001 (1826) which was renewed by him in Chingom 1016 (1841) for 172¼ rupees; that he paid 44½ rupees as interest from 1842 to August 1844; that he (Tolen) died in 1022 (1847) and his heirs (the Defendants) decline to recognise or liquidate his debt, and have placed 12th Defendant in possession of the paramba and prays therefore that the original sum, with interest, may be recovered by sale of the garden and house originally mortgaged for his security.

3. First, 4th and 5th Defendants answer to the effect that Tolen left them no property; that the garden and house were not acquired by him but are tarwaad property, and could not have been

disposed of without the sanction of the family, and that the garden was let on kanom to 12th Defendant by their deceased karnaven Amboo Vydear.

4. Twelfth Defendant confirms the assertion of other Defendants and declares he has been 38 years in possession on a kanom claim of 550 fanams, and that Plaintiff was cognizant of the fact.

5. The Moofty Sudr Ameen considered the claim to have been most clearly established and declared the pleas in opposition extremely weak and untenable. Tolen was the karnaven and active manager, and any transaction by him, at such a time was necessarily transferred to his successors and heirs.

6. Against this decree 1st, 4th and 5th Defendants appeal by reiterating their former assertion as to the immunity of the tarwaad property, and their exemption from the consequences of transactions effected solely for private and not for family advantage.

7. The Respondent in his answer reasserts his previous arguments.

JUDGMENT.

8. The deed on which this claim is founded is not attempted to be denied, but is said to be ineffectual against the family property, or the Defendants who inherited nothing from their deceased relative Tolen. It is clearly proved by oral and documentary evidence that Tolen, when he contracted this debt, was the active manager of the property and karnaven of Appellants. As for the sanction of all the members of a family being necessary to secure a bargain on tarwaad property, it is strange to see how, by their own acknowledgment, the Defendants refute themselves. The 12th Defendant is declared to hold a kanom right under the sole guarantee of a deceased ancestor Amboo Vydiar; and on being questioned on this inconsistency in their plea and evidence, declare the latter debt was contracted for the general benefit, and, not like the former, for merely individual advantage. This is mere assertion apparently raised to prevent Respondent's recovery of his debt, and since it is the practice of the country as well as the established precedent of the Courts, to support the bonâ fide act of a karnaven against the interested opposition of his heirs after his death, the Court sees no reason to disturb the original decree, but non-suits the Appellants with costs of suit.

THE 27TH JANUARY 1857.

Appeal Suit No. 124 of 1855.

Appeal from the decision of Moulavee Syed Mahomed Ghous, Moofty Sudr Ameen of Tellicherry, dated 5th February 1855.

Korote Coorumbun, (1st Defendant,) Appellant.

Soobrian, (Plaintiff,) Respondent.

1. This is an appeal from the decree passed by the Moofty Sudr Ameen affirming the claim advanced by Plaintiff for a debt contracted by 1st Defendant's brother and 2d Defendant's husband.

2. The plaint sets forth that 1st Defendant's elder brother, the deceased Korote Chungaren, borrowed 40 rupees from Plaintiff's younger brother for the purpose of liquidating a kanom debt on the Oolatil paramba, and wrote a receipt for the sum on 9th of August 1852 ; that as 1st Defendant has inherited his brother's property and 2d Defendant is in possession of the Oolatil paramba, Plaintiff prays the amount may be recovered from them and his expenses paid.

3. 1st Defendant denies having inherited a particle of property belonging to his brother who had too large a family to have any, or to have saved any thing from his pay as a peon of the Court. That whilst his brother was sick this debt was the subject of discussion, and as it was contracted for the Oolatil garden over which Defendant has no manner of interest he cannot be held answerable for it.

4. 2d Defendant denied all knowledge of the debt. The deceased had no right or control over the Oolatil paramba which is in her possession and came to her from her uncle and other legal claimants.

5. The Moofty decided that 1st Defendant was his brother's heir and had inherited his property, but that it does not appear either had any right or title to the Oolatil paramba, decreed accordingly that 1st Defendant should cancel the debt and pay all the expenses.

6. Against this decree 1st Defendant appeals on the ground of his not having inherited any property belonging to his brother and for other reasons assigned in his original answer to the claim, acknowledges having applied for and obtained the small balance

of salary due to his brother, amounting to rupees 5-14-0, which is not, he considers, any reason for his being held answerable for a debt of rupees 72.

7. Respondent answers by enforcing his claim on his previous arguments and shewing the justness of the award.

JUDGMENT.

8. The only question for the consideration of the Court was whether Appellant inherited any thing from his brother which could render him liable for his debts. As all verbal or documentary evidence was defective and Appellant expressed his willingness to decide the question by an oath, which was agreed to by the Respondent, the Appellant swore in accordance with his assertions, and the Court has accordingly merely to reverse the original decree and dismiss the suit with all costs against Respondent.

THE 27TH JANUARY 1857.

Appeal Suit No. 170 of 1856.

Appeal from the decision of Moulavee Syed Mahomed Ghous, Moofty Sudr Ameen of Tellicherry, dated 25th March 1856.

Gunnawathy, son of Vengapa Mullen, (Plaintiff,) Appellant.
By Vakeel Narainen.

Anantha, Mallen, (Defendant,) Respondent.

1. This is an appeal from the decree of the Moofty Sudr Ameen dismissing the claim of rupees 437-9-4, being the price, with equivalent interest of 33¼ pounds of opium.

2. Plaintiff stated that his father bought 19 pots of opium which he pawned to Joonoos Samarany who granted a bond for the same on 6th Dhanoo 1005 (18th December 1829) and sent 12 of the pots for sale into Travancore; on the way, or subsequent to arrival, 8 of the pots were stolen and only 7 recovered from Defendants, who, in conjunction with his (Plaintiff's) father, had effected the robbery; he (Plaintiff) was therefore advised to sue Defendant for restoration of the unrecovered jar of opium or its value.

3. Defendant answers by asserting that the 12 pots were

carried to the south and eventually made over to the agent of Joonoos after he had instituted criminal proceedings for their recovery.

4. The Moofty dismissed the suit on the ground of the value of one pot of opium having been expended in the necessary payment of duty by Defendant.

5. The Plaintiff appeals by reiterating his original statement.

JUDGMENT.

6. This is a strange application, and as illegal as it is strange. The Plaintiff's father pawned some opium to Joonoos, a Tellichery merchant, who then entrusted into his and his brother's hands (the father and uncle of Plaintiff) 12 jars for sale in Cochin and Travancore. Whilst proceeding thither, or after their arrival, these two men combined in a pretended robbery of the opium which on a Police investigation in Travancore, was discovered in possession of this Defendant who, together with Plaintiff's father, was fined for the offence, and Joonoo's agent directed to sue for the loss of one unrecovered jar. The agent omitted to do this. The Plaintiff's father died long since, and his son, many years afterwards, actually sues his uncle for a share in or loss sustained by robbery wherein his own father was convicted as a principal.

7. The illegality and absurdity of the claim can only be accounted for on the plea of ignorance, and the Moofty ought to have dismissed the suit on grounds which would have prevented an appeal or rendered the Appellant liable to fine for pursuing a more than frivolous claim, which is now dismissed with costs.

THE 27TH JANUARY 1857.

Appeal Suit No. 171 of 1856.

Appeal from the decision of Moulavee Syed Mahomed Ghous, Moofty Sudr Ameen of Tellicherry, dated 25th March 1856.

1. Ganavathy, son of Vengapa Mallen, (3d Defendant)
2. His younger brother Madavan,....(4th ditto) } Appts.,

By Vakeel Narrainum.

1. Anantha Mallen, (Plaintiff,)
2. Rama Kristna Mallen, (2d Defendant,) } Respondents.

1. This is an appeal from the Moofty Sudr Ameen's decree affirming Plaintiff's claim to a division of family property, and a share in opium purchased and mortgaged by the deceased Vengapa Mallen, his elder brother and father of 3d and 4th Defendants.

2. The Plaintiff stated that in Toolam 1025 (October 1829) he and his elder brother mortgaged certain family property, with the proceeds of which the latter, Vengapa Mallen, purchased 19 pots of opium which he and 1st Defendant, disregarding Plaintiff's right to participate, divided amongst themselves; that 3d Defendant having sued 1st Defendant for value of the opium mortgaged to 1st Defendant and obtained a favorable decree, Plaintiff likewise now asserts his claim to a third share in the 550 pounds of opium which 1st Defendant appropriated.

3. First Defendant answers protesting against being made a party to the present action.

4. Second Defendant assents to the plaint and asserts his right to a share.

5. Third Defendant answers that the transaction took place 18 years before the institution of Plaintiff's first suit under No. 25 of 1848, and 24 years prior to the present, and that the claim is clearly barred by the statute of limitations, the penalty, in regard to 3d Defendant, having been cured or removed by his youth and inability to sue before.

6. The Moofty Sudr Ameen, without noticing the manifest breach of the law of limitations, considers Plaintiff has proved his right to a share and awards one in accordance with his prayer.

7. Against this decision 3d and 4th Defendants appeal by denying Plaintiff's right to any share whatever, declaring the opium was the acquisition of their father from his own immediate funds, the mortgage deed for which in favor of 1st Defendant being in his (their father's) sole name.

JUDGMENT.

8. This Plaintiff was accused and punished by fine, in a Police Court of Travancore, for having attempted to plunder and embezzle a portion of the opium in which he now claims a right to participate! This occurred in 1829 and nothing was heard of the Plaintiff and his pretensions until finding, in 1848, that Appellant was suing to recover his claim on the opium mortgaged by his father to 1st Defendant; he came forward with the present story of a right consequent on its original purchase having been effected from funds acquired by the disposal of family property!

9. Declining to discuss the absurdity of the claim and its utter want of proof, it must be dismissed under the law of limitations, for a breach of which no better reason is assigned than that as Appellant has been allowed to sue, and obtained a favorable decision, there is no objection to Respondents following a similar course. But the circumstances are widely different. The youth of Appellant was allowed to cancel an objection which, but for this plea, would have been invincible, and this plea Respondents cannot pretend to assert.

10. Original decree reversed with all costs against the Respondents.

THE 31ST JANUARY 1857.

Appeal Suit No. 203 of 1855.

Appeal from the decision of Soobba Row, District Moonsiff of Cavye, dated 2d August 1855.

1. Manikomkidakiar, (female,) (2d Plaintiff,)
2. Chiaye, (ditto) (3d ditto)
3. Paty, (ditto) (4th ditto)
4. Coonhy Ramen, (5th ditto)
5. Coonhy Kanen, (6th ditto)
6. Parwahy (female,) (7th ditto)
7. Lutchmy (ditto) (8th ditto)

} Apellants.

By Vakeel Pydel Menon.

Payawathil Mawila Poothiavittil Chindan, } (Defendant,) Respondent.

1. This is an appeal from the decree passed by the Cavye Moonsiff rejecting the Plaintiffs' claim to certain property in the hands and under the direct management of Defendant.

2. The Plaintiffs stated that Defendant having dissipated their tarwaad property, they were compelled to bring the subject to the notice of the authorities, and, in consequence of instructions from the Magistrate, the Defendant in 1024 (1848-49) allotted paddy fields and parambas for their subsistence. But since he continues to dissipate the estate, the Plaintiffs pray he may be made to restore the rest of their family property, after a certain portion has been deducted for his personal expenses.

3. Defendant answers that his deceased brother and himself acquired the property under dispute, but as 1st and 2d Plaintiffs' sons quarrelled with and molested him, he listened to the advice of friends and mediators and made a formal division of the estate with a karar dated 1024 (1849) which, according to the rauzee presented to the Cirkar, stipulated for a division with unfettered control and disposal of their respective shares and allotments, without subsequent right or title to each other's division.

4. The Moonsiff observed in his decree that a formal and regular division of property having been effected, the present claim was totally unwarranted and most unreasonable.

5. Against this decision 2d to 8th Plaintiffs appeal objecting to the karar and rauzee that they merely secured a portion of the family property for their sustenance, without disturbing their eventual claims to the whole, and that a formal division, where nepotism is the law of succession, is opposed to Hindoo law and practice.

6. Respondent answers by reiterating his previous assertions and requests the terms of the rauzee may be strictly enforced, his expenses paid and Appellants punished for instituting a frivolous and vexatious appeal.

JUDGMENT.

7. This appeal is perfectly untenable. The 1st and 2d Plaintiffs with their sons, during the minority of 5th and 6th Plaintiffs, entered into a formal agreement before most respectable witnesses for a final settlement of their long pending differences. By this instrument the family property is divided between the Plaintiffs and Defendant, both parties being left in unfettered control over their respective shares. The sons of 1st and 2d Plaintiff have in other suits acknowledged and asserted the correctness of this division, and it is extraordinary how they and their mothers should think it worth their while to prosecute such an utterly worthless claim as the present. The rauzeenamah has ended the discussion, and there is nothing for it except a strict and undeviating obedience to all its terms. The assertion of a division being opposed to Hindoo law, where the rules of maroomakatayem prevail, is not true, as the heirs by mutual consent and agreement, as is the case here, have full authority to effect a partition of the family estate.

8. The original decree confirmed with costs of appeal against Appellants.

ZILLAH TINNEVELLY.

PRESENT: E. STORY, ESQ., CIVIL JUDGE.

THE 23D JANUARY 1857.

Appeal Suit No. 14 of 1856.

Appeal from the decision of Moulavee Mahomed Tauzzoodeen Hoossain Khan Saib, Moofty Sudr Ameen of Tinnevelly, under date 27th December 1855.

Moottoosawmy *alias* Yanoack and 23 others, (3d, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, 27th and 28th Defendants,) Appellants.

Narasinga Row, and 4 others, (1st to 5th Plaintiffs,) Respondents.

1. Plaintiff sued for certain poonjah warram and garden land and palmyra trees valued at rupees 650 and arrears of rent rupees 149; upon the grounds that the property in question was the ancestral property of the Plaintiffs and 1st Defendant and that the other Defendants, the under tenants, had left balances of rent from fusly 1257 (1847-48) to 1263 (1853-54) and neglected to deliver to Plaintiffs the warram on lands liable to a division of produce.

2. 1st Defendant exparte.

3. 2d, 4th and 29th Defendants admitted the claim.

4. The 3d, 5th to 13th and 16th to 28th Defendants pleaded that they were entitled to hold the property claimed in per-

petuity upon a payment to Plaintiffs (the landlord's) of rupee 1-0-8 5 fanams rent per 1 chain of poonjah land and 19 poons and 3 fanams upon the palmyra trees; that the backyard gardens was to be held free of tax, and that the arrears claimed and which had been disallowed by the Collector, were not justly due.

5. The Moofty Sudr Ameen adjudged the property sued for the Plaintiffs and rent upon the poonja land at rupee 1-0-8 5 fanams per chain.

6. The 3d, 5th to 13th, and 16th to 28th Defendants appeal on the grounds;

1st. That the Plaintiffs' exhibits are void under the moochilka and rauzeenamah Nos. 81 and 114, and village Moonsiff's depositions 103 and 105 (XI and XIII); that the Defendants in virtue of 81 and 114 are entitled to hold the palmyra trees and poonjah lands in perpetuity, and that these documents have been upheld by the Revenue authorities and the Court in exhibits 87, 94, 95, 101 and 111 to 117 (VII, VIII, IX and XVI to XXII) and by decree of the Civil Court in Appeal Suit No. 126 of 1854;

2d. That the receipts 82, 83, 84 and 86 (II, III, IV and VI) prove that it is usual to pay the rent of one year in another and that they have paid the tax and samybogum due upon the poonjah lands up to fusly 1259 (1849-50);

3d. That the exhibits 85 and 106 and 109 (V, XIV and XV) prove that the disputed gardens and wells were formed by Defendants and enjoyed by them from a long time, and that their witnesses have proved their hereditary enjoyment of the property, and that the Plaintiffs are entitled to the tax and samybogum only;

4th. That the Moofty Sudr Ameen proceeded to judgment prior to the receipt of 2 documents from the Revenue Department, which would prove that they are not liable to pay the rents to Plaintiffs, owing to their having neglected to conform to the rauzeenamah aforesaid and that the backyards are exempted from tax.

7. The Defendants pray that the above 2 documents and the proceedings of the Revenue Board under date 29th October 1855 remitting tax on topes and palmyra trees, may be allowed to be filed in appeal.

8. The Plaintiffs answered;

1st. That the exhibits 81 and 114 (I and XIX) were not

binding on them; the Plaintiffs from the 3d not being parties to the former (81) and the latter (114) having been given by 1st Plaintiff only and being inadmissable even against him as the 3d Defendant who promised to be submissive, subjected Plaintiffs to much trouble by being in arrears, and that the decision No. 113 (XVIII) founded thereon is likewise of no effect as the proceedings of the Head Assistant Collector were not conducted in conformity with Regulation V of 1822 quoted therein, and that the giver of depositions 103 and 105 (XI and XIII) was dismissed from the service of the 1st and 2d Plaintiffs' father and is moreover an under tenant like the Defendants; that his subsequent sworn deposition in No. 82 of 1849 is in their favor; that exhibits 94, 95 and 101 (VIII, IX and X) are not final; that 104 (XII) is favorable to them; that 111 (XVI) was annulled by 67 (*C*); and that 115 and 116 (XX, XXI) are not beneficial to the Defendants who neglected to pay the old balance and receive puttahs, and at any rate could not affect their (Plaintiffs') right to the recovery of the land;

2d. That the receipts referred to by Defendants were not proved; that the plea of discharge of rent was not urged in the original pleadings, and that the Defendants virtually admitted the evidence to the balance of rents by failing to question the Plaintiffs' witnesses on the subject;

3d. That the wells were not proved to be the property of Defendants; on the contrary the 2d Defendant who enjoyed them has admitted the Plaintiffs' claim;

4th. That the other documents are irrelevant.

JUDGMENT.

8. There are 4 questions to be disposed of in this suit, viz. 1st, the right of renting out the poonjah land; 2d, that of renting out the palmyra trees; 3d, that of recovering and taxing the backyard gardens; and, 4th, arrears of rent.

9. With regard to the 1st question Defendants mainly rest their right on Document No. 19; but this document even if binding on the Plaintiffs does not confer a perpetuity of right on the Defendants, and in the opinion of the Court it is not binding, the 2d and other Plaintiffs not being parties thereto.

10. Document No. 1, on which Defendants rely to prove their perpetual right to pay only a certain fixed tax on the palmyra trees, is not in the opinion of the Court, binding on the Plaintiffs, as it makes no conditions.

11. The Plaintiffs have not proved their right to the back-

yard gardens, that they are not situated at the backyard, or their right to tax the same.

12. The documents alluded to by the Defendants in reference to the question do not prove that they have paid the whole rent up to 1850.

13. With regard to the documents* now called for by the Defendants, it appears that the Moofty Sudr Ameen sent to the Collector for copies thereof; and that that officer in reply stated that there was no such order of that date, and that the alleged giver of the statement denied having done so.

* One is an alleged order issued by the Head Assistant Collector on 11th May 1852, the other an alleged statement given by a certain Curnum.

14. Defendants do not appear to have moved further in the matter, in the Court of the Moofty Sudr Ameen.

15. The decree below is confirmed with the exception of the right of the Plaintiffs to recover the backyard gardens and to tax the same with costs in proportion throughout.

THE 24TH JANUARY 1857.

Appeal Suit No. 15 of 1856.

Appeal from the decision of W. H. Arbuthnot, Esq., Head Assistant Collector of Tinnevelly, under date 3d January 1856.

Vengatamien, (Defendant,) Appellant.

Soodalamoottoo Pillay and another, (Plaintiffs,) Respondents.

1. This is an appeal from the decision of the Head Assistant Collector awarding 1¼ chain of land valued at rupees 30 to Plaintiffs on the ground of forcible dispossession by Defendant.

2. The grounds of objection taken to the said decree by Defendant, are;

1st. That the Head Assistant Collector had failed to receive evidence to the fact of his proprietary right;

2d. That no notice was taken by him of the Plaintiffs being in arrear;

3d. That the plaint and reply and the evidence thereto are contradictory ;

4th. That Defendant's witnesses had established the fact of the land having been leased to several others before having been rented to Plaintiffs ; that certain public documents and adaolays which would prove that fact were not received, and that 3 of his witnesses were not examined ; that he was not allowed to examine these witnesses in detail.

3. The Plaintiffs answer;

1st. That their improvement and cultivation of the land was fully established ;

2d. That the Defendant did not establish the arrear nor the custom of paying sawmybogum ;

3d. That plaint and reply are not contradictory ;

4th. That neither the Defendant nor his witnesses allude in the original enquiry to the land having been leased to others and to the existence of adaolays, and that Defendant did not request that his witnesses may be questioned nor mention that there were other witnesses.

JUDGMENT.

4. The Plaintiff admits the proprietary right ; evidence therefore to that point was unnecessary.

5. The rent is rupees 7-15-6 ; of this Defendant admits the payment of rupees 5-8-0 the payment of balance rupees 2-7-6, the Plaintiff has not attempted to prove, confining himself to assertion.

6. There are no material discrepancies in the pleadings and evidence.

7. The Defendant's witnesses do not prove the previous renting of the land " to several others" ; but they mention one person, whom the Plaintiff also mentions in his reply as a sharer with him in the said land.

8. There is nothing to shew that the Defendant was not allowed to examine his witnesses in detail, and Defendant though he named 3 witnesses, did not take the necessary steps to ensure their attendance.

9. As the Plaintiff has failed to prove that he is not in arrears, the decision of the Head Assistant Collector, must in the

opinion of the Court, be reversed, which it accordingly is with all costs throughout.

THE 26TH JANUARY 1857.

Appeal Suit No. 29 of 1856.

Appeal from the decision of Moulavee Mahomed Tazzooddeen Hoossain Khan Saib, Moofty Sudr Ameen of Tinnevelly, under date 11th December 1855.

Ganapathy Saustryar, and two others, } (110th, 145th and 153d Defendants,) Appellants.

Lingarama Naicken and 30 others, } (1st to 31st Plaintiffs,) Respondents.

1. Plaintiffs sued in order to establish their sole right to certain lands yielding yearly rupees 1,500-11-9.

2. The 153d and 169th Defendants claimed the said lands as belonging to them and the other Defendants.

3. Exparte against the other Defendants.

4. The Moofty Sudr Ameen decreed as sued for.

5. The 153d and 169th Defendants urge in appeal;

1st. That the Plaintiffs have not proved the point recorded for them, and that the Plaintiffs' witnesses have been suborned as will be proved by their (Defendants') Document No. II;

2d. That their right is proved by their Documents Nos. IX and X;

3d. That there is no proof to shew how the individuals to whom puttahs *A* and *B* were given were related to Plaintiffs or that the puttahs appertain to the land in dispute; that their document *C*, is of no avail to them but supports Defendants' Documents V and VI, and that the decision in Appeal Suit No. 153 of 1852 will shew that the Plaintiffs' allegations are false;

4th. That the remark in the decree on Plaintiffs' document *D* is not in accordance wtth the tenor of that document; and that their (Defendants') Documents Nos. IV, XI and XII and

witnesses have proved their assertions regarding the sale by them of portions of the land in dispute;

5th. That their Documents II, VI and VIII and witnesses prove the payment to them of sawmybogum by the under tenants, and their Document No. III; that the said under tenants have agreed to give up to them (Defendants) the lands.

6. The Plaintiffs with the exception of the 19th and 25th deceased, in answer observe ;

1st. That they have proved their points; that the evidence of the 1st, 2d, 5th and 7th witnesses on behalf of the Defendants also supports them, and that the Document II is favorable to them ;

2d. That the Exhibit IX proves nothing; that Exhibit X has been fraudulently got up by Defendants and being copy of an unauthenticated village record is useless, and that Exhibits I, III, VII and XIII do not relate to the land in dispute;

3d. That in para. 4 of the reply it has been explained that *A* and *B* were given to the father of the 13th and 14th Plaintiffs; that *C* supports their case and that the decree in Appeal Suit No. 153 of 1852 has no reference to the present suit;

4th. That the Exhibit *D* has been correctly construed; and that the Exhibits IV, XI and XII are useless;

5th. That of the 2 witnesses to the alleged payments of sawmybogum, the 5th alone is an eye witness and his statement refers to a period beyond 12 years.

7. The heirs of the 19th and 25th Plaintiffs exparte.

JUDGMENT.

8. Plaintiffs claimed the land as "Buttavurty" (i. e. their own and do as they like with) and as having reclaimed it; the Defendants claim it as "Pungoovaly" (i. e. land held in shares by Brahmins).

9. The Defendants are the shareholders of the village to which the land in dispute is attached and in which the Plaintiffs live, and assert that Plaintiffs have paid and ought to pay them quit rent for the same.

10. The evidence for the Plaintiffs proves that the said village is a "Pungoovaly one" and that the Plaintiffs have no right to sell the land in dispute, but they prove that Plaintiffs

have held the undisturbed enjoyment thereof for from 20 to 50 years without paying quit rent; and the Plaintiffs' document tends to corroborate this evidence.

11. The Court is not satisfied with the oral and documentary evidence produced by the Defendants to prove that quit rent has been or ought to be paid.

12. After a careful consideration of the whole record, the Court is of opinion that the decree of the Lower Court must be confirmed and with costs.

13. Ordered accordingly.

THE 27TH JANUARY 1857

Appeal Suit No. 37 of 1856.

Appeal from the decision of C. Vencatachelliah, Principal Sudr Ameen of Tinnevelly, under date 29th September 1855.

Nagojee Row, and 4 others, (1st, 2d, 4th, 5th and 8th Defendants,) Appellants.

Soobbanaicken, (Pauper Plaintiff,) Respondent.

1. Plaintiff sued in order to establish his right to certain lands, a site, gardens, ornaments, brass utensils and profits on the said land to the value of rupees 2,870-1-5 as the adopted son of Sunkaranaroyana Naick.

2. 1st to 5th Defendants denied the adoption and its legality or that the said Sunkaranaroyana Naick had a house, or that the ornaments &c. sued for were deposited with the 1st, 3d and 4th Defendants, and pleaded that they purchased the above lands and gardens from Rajakaul the widow of Sunkaranarama Naick.

3. Exparte against 6th and 7th Defendants.

4. The Principal Sudr Ameen in his revised decree considered the adoption proved and adjudged the site lands and gardens valued at rupees 1,091-13-1 to the Plaintiff; but rejected his claim to the ornaments &c. and the profits.

5. 1st, 4th and 5th Defendants and 2d Defendant's heir urge in appeal;

1st. That the witnesses to the adoption and performances of funeral rites are low fellows and have contradicted themselves; that the evidence of the 4th and 6th witnesses who after having been examined in chief were dispensed with by the Plaintiff has been quoted in favor of the Plaintiff in the decree; that 18th and 19th witnesses have not deposed to the Plaintiff's adoption and performance of funeral rites and that the Plaintiff has been called the son of "Ramakristna Naick" in Exhibits XIII and XV;

2d. That the Plaintiff's 1st witness stated in the original trial that Plaintiff was the eldest son, whereas in the reinvestigation his 2d, 3d, 7th, 18th and 19th witnesses declared that there was an elder brother to him who died after his adoption;

3d. That the evidence to the falsehood of the adoption has been rejected without assigning any reason;

4th. That the Plaintiff's exhibits *FF*, *GG* and *HH* are untrue as the Plaintiff is shewn not to have had any enjoyment of the lands &c. and the said documents ought not to have been received in evidence being copies of unauthenticated cadjans;

5th. That Rajakaul's succession to Sunkaranaraina Naick and her enjoyment have been proved;

6th. That there was sufficient necessity for the sale made by the said widow and that the assertions made by the Plaintiff at different times are contradictory;

7th. That if the adoption was true the land would not have been registered in the name of the widow;

8th. That the Principal Sudr Ameen's remark that the Plaintiff and Rajakaul lived together for sometime is unsupported by any document;

9th. That due attention was not paid by the Principal Sudr Ameen to the Defendants' exhibits;

10th. That the Principal Sudr Ameen's opinion in para. 50 is opposed to that recorded in para. 49;

11th. That the Principal Sudr Ameen was in error in disallowing the sales which he allowed to be undisputed.

6. The Plaintiff in answer observes;

1st. That his adoption has been fully established and that Exhibits XIII and XV have been got up by Defendants;

2d. That his 1st witness did not depose that he (Plaintiff) was the eldest son;

3d. That the Defendants' witnesses are low fellows and have been very properly discredited;

4. That the 3 exhibits referred to were produced by the talook royasum and are free from objection and were admitted in the rejoinder;

5th. That the alleged sole enjoyment of Rajakaul is false;

6th. That no consideration was paid by Defendants for the documents obtained by them;

7th. That the registry in the name of Rajakaul was fraudulently effected by the Curnum;

8th. That the 8th, 9th and 10th objections are incorrect;

9th. That the Principal Sudr Ameen has properly declared the sale invalid.

JUDGMENT.

7. There are no contradictions of any moment in the evidence to the adoption &c. and the Court considers the evidence on these points satisfactory; as the Defendants were not given an opportunity to cross question the 4th and 6th witnesses, the Principal Sudr Ameen ought not to have quoted their evidence in his decree; but the adoption and the performance of the funeral rites are sufficiently proved by the 1st, 2d, 3d, 5th, 7th, 8th and 10th witnesses fully examined on those points; and for the same reason it is unimportant that the 18th and 19th witnesses did not depose thereto.

8. The 1st witness for Plaintiff states that Plaintiff had two "younger brothers", but does not say in so many words that Plaintiff was the eldest; and as some of the other witnesses state that Plaintiff's father had four sons, the Court attaches no importance to this objection.

9. The Principal Sudr Ameen in the 31st para. of his decree rejects the evidence to the non-adoption, as being unsatisfactory, and in this opinion the Court concurs.

10. The Principal Sudr Ameen does not appear to have attached any weight to the exhibits *FF*, *GG*, *HH*, as they are not alluded to in his decree; and most probably because they are copies of copies. They do not in any way affect the Plaintiff's claim to the land &c; these documents are not admitted in the rejoinder.

11. There appears to have been disputes between the Plaintiff and his adoptive mother, and the result was that she kept possession of the property; but that does not prove that Plaintiff had no right thereto.

12. As the Court is of opinion that the adoption is proved, the sale of land by the Plaintiff's adoptive mother was illegal.

13. As Plaintiff's adoptive mother had possession of and refused to resign the property, it follows that the land would be registered in her name, until Plaintiff had proved his adoption.

14. The Principal Sudr Ameen does not state in paras. 44 and 48 of his decree that the Plaintiff and his adoptive mother lived together for some time.

15. The Principal Sudr Ameen expressly states in his decree that he has come to his decision "on a consideration of the entire record" and his decree fully bears this out.

16. The Court can see no contradiction between paras. 49 and 50 of the Principal Sudr Ameen's decree.

17. The Principal Sudr Ameen could not do otherwise than to declare that the said sales were illegal, seeing that he was of opinion that the adoption was proved.

18. Decree below affirmed with costs.

THE 27TH JANUARY 1857.

Appeal Suit No. 120 of 1856.

Appeal from the decision of C. Vencatachelliah, Principal Sudr Ameen of Tinnevelly, under date 29th September 1855.

Soobba Naicken, (Pauper Plaintiff,) Appellant.

Nagojee Row and 5 others, } (1st, 2d, 4th, 5th, 8th and 9th Defendants,) Respondents.

1. The Plaintiff appeals against that portion of the decree of the Principal Sudr Ameen which disallowed his claim to certain ornaments, utensils and profits &c. to the value of rupees 1,773-4-4, upon the grounds;

1st. That his witnesses have established the deposit of ornaments and utensils with 1st, 3d and 4th Defendants;

2d. That his claim to the amount of mortgage was proved by his witnesses and exhibit II;

3d. That the profit derived from the village of Rendampooly was proved by his 12th witness a Tamil goomastah and is undisputed;

4th. That the amount claimed as the income of the tope was merely underrated by the 1st and 3d Defendants;

5th. That the profit of the gardens is likewise undisputed by the 4th and 5th Defendants who enjoy them.

2. The 1st, 4th and 5th Defendants and the heir of the 3d Defendant and the heir of the 2d Defendant in their answer observe;

1st. That the alleged deposit of ornaments &c. with the Defendants whom Plaintiff calls his enemies, is false;

2d. That the statements of the Plaintiff with regard to the mortgage are contradictory and that a 2 rupees stamp was not required for the sum of the mortgage as shewn by the extract of the stamp sale registry II;

3d. That the profit claimed was neither admitted nor proved;

4th. That the income of the tope was insufficient to cover the tax &c.;

5th. That a profit of 12 rupees was not derived from the garden.

JUDGMENT.

3. The Principal Sudr Ameen rejected the various items mentioned in the appeal objections, on the ground that they were not proved, the Court is of the same opinion; the Defendants do dispute the two last items.

4. Decree below affirmed with costs.

THE 28TH JANUARY 1857.

Appeal Suit No. 38 of 1856.

Appeal from the decision of C. Vencatachelliah, Principal Sudr Ameen of Tinnevelly, under date 27th December 1855.

Soodalayadoomparoomal, and another, } (1st and 3d Defts.,) Applts.

Peraveparoomal *alias* Gnanamoottoo, and 2 others, } (Pauper Plffs.,) Respondents.

1. Plaintiffs sued for the restitution of 4 velays, or fields, valued at rupees 50 with rupees 119-11-5 as the produce thereof for 5 years, viz. up to 1849 with future profits and ⅓d of a well worth rupee 1, upon the ground that the Defendants who held a mortgage thereon refused restoration.

2. The 1st and 3d Defendants claimed the property as having purchased the same under the Exhibits II and III from one Palavasamoottoonadan and one Vyravanadan ancestors of the Plaintiffs.

3. Exparte against the other Defendants.

4. The Principal Sudr Ameen by his revised decree adjudged the land only to the Plaintiffs and disallowed the produce.

5. The claim to the well was not noticed.

6. The 1st and 3d Defendants urge in appeal;

1st. That if the Court will peruse the Puttah No. I filed by them, and the oral evidence to their deed of sale No. II, it will be convinced that they have proved their right to the land and enjoyment thereof;

2d. That the witnesses who depose to the alleged mortgage and the counter mortgage deed are Defendants' enemies as admitted by the said witnesses;

3d. That punchayet decisions *D* and *E* are fictitious and were got up by the village officers who are at enmity with them;

4th. That the Principal Sudr Ameen's comment in para. 22 of his decree on the Defendants not having produced a puttah

for the land in their own name is opposed to Plaintiffs' admission of such puttahs for the lands in dispute having been issued in their name;

5th. That the Plaintiffs would not for a trifling amount, viz. rupees 5-11-7 have suffered Defendants to retain, in mortgage, for a period of 31 years, lands yielding yearly rupees 50; that the well which cost 120 rupees has been valued at only one rupee, and that the Principal Sudr Ameen has omitted to notice an essential point in his decree, viz. that of quit rent;

6th. That the puttahs produced by them disproved the Plaintiffs' allegation that Vyravanadan died previous to their deed of sale No. II.

7. The 1st Plaintiff, in answer, observes;

1st. That the puttahs produced by the Defendants disprove their own answers;

2d. That the alleged enmity is on idle excuse;

3d. That the decisions by the mediators were not fictitious ones;

4th. That they did not admit that puttahs for the lands in dispute were given in the name of the Defendants; but that a fraudulent registry for a portion thereof in the names of the Defendants had been effected;

5th. That the produce has been incorrectly disallowed and should be adjudged to them; that the value of land in this District has been of late daily rising; that the well has not been under estimated, and that the quit rent has nothing to do with the present claim;

6th. That though puttahs may have been issued in the name of the said deceased, it is no proof that he was living when these puttahs were issued, as it is a common practice to issue puttahs in the name of deceased persons.

JUDGMENT.

8. The Principal Sudr Ameen in his decree observes that puttah No. I falsifies that portion of the answer of the Defendants connected therewith; the Court is of the same opinion and also agrees with the Principal Sudr Ameen in thinking that the defence is throughout false.

9. The Court can see no reason for rejecting the evidence

to the mortgage deed *C*, or for doubting that the punchayet decisions *D* and *E* are genuine.

10. The record bears out the explanation of the Plaintiff's regarding the 4th objection; the Court entirely concurs with the Principal Sudr Ameen in this portion of his decree.

11. There can be no doubt that the value of land has increased in this Zillah and is still increasing; and the record shews that both parties have been disputing about this property since 1845; Defendants in their original pleadings do not say that the well costs 120 rupees, but that they made it at their own expense; and as observed by Plaintiffs the matter of quit rent has nothing to do with the present case.

12. In the opinion of the Court the Plaintiffs have satisfactorily answered the 6th objection.

13. The mortgage Document *C* shews that the previous mortgage held by the Defendants on the land in dispute was for 12 years, dating from 2d October 1825; by *C* this mortgage was extended for 6 years, viz. to the 25th September 1843; Documents *D* and *E* shew that in 1845 the Defendants were requested to receive the mortgage amount and restore the land; that they promised to do so, but did not.

14. The Plaintiffs sue for profits from 1845, and under the above circumstances the Court is of opinion that they are entitled thereto, but not to the extent claimed by them; which should be calculated with some reference to the amount for which the land was originally mortgaged and in the opinion of the Court profit at the rate of 5 rupees a year from 1849 is sufficient, which it accordingly decrees.

15. With this exception the decree below is confirmed with original costs in porportion; but full appeal costs.

THE 29TH JANUARY 1857.

Appeal Suit No. 42 of 1856.

Appeal from the decision of Arnachellem Pillay, Principal Sudr Ameen of Tinnevelly, under date 25th May 1852.

Naraina Row, (Defendant,) Appellant.

Cunday Row, (Plaintiff,) Respondent.

1. Plaintiff sued to recover land valued at rupees 94-6 with

arrears of rent thereon for fuslies 1260 (1850-51)and 61 (1851-52) and interest, total rupees 191-10-5, and future rent as per agreement *A*, dated 27th December 1824 executed by Defendant's aunt Gengaboyummaul to the terms of which Defendant agreed in a rauzeenamah *D*, to conform, but failed to do so.

2. Defendant pleaded that under *A*, and its counter (No. I) executed by Plaintiff's father to Defendant's aunt, there was no necessity for the Plaintiff's making any demand upon him for rent, but that he (Plaintiff) was at liberty to enter upon possession of the land to which he (Defendant) made no objection.

3. The Principal Sudr Ameen considering the Defendants enjoyment of the land proved by his not denying having had possession of the property, decreed as sued for.

4. The Defendant urges in appeal ;

1st. That under the agreement *I* Plaintiff was bound to enter upon possession in default of payment of rent ; that he could not be sued unless he had offered any objection to its occupation by Plaintiff ;

2d. That the alleged demand of rent was false and not warranted by the agreement, and that the principal Sudr Ameen's remark to the effect that Defendant had not denied enjoyment of the land was irregular such not having been laid down as a point for proof.

5. The Plaintiff in answer observes ;

1st. That as the Defendant was making promises of payment and was in possession of the land, he did not interfere with his occupation, a disturbance of which would expose him to a criminal proceeding ; that he was therefore right in bringing the suit, and that as the Defendant did not deny his enjoyment or his collection of the rent from the land, it is clear that the decree below is correct.

JUDGMENT.

6. The record shews that the Plaintiff's father and Defendant's uncle jointly purchased an estate ; that Defendant's uncle having died, his widow and the Plaintiff's father divided the said estate in fusly 1234 (1824-25) ; that Plaintiff's father rented his share of the land to the said widow at a yearly rent of rupees 87-8 exchanging documents *A* and No. I, and that the said widow having died Defendant became her heir.

7. The Defendant does not deny *A*, but argues that as *A* states that if the rent is not paid the Plaintiff is to take the land "*instead* thereof" he (Defendant) is not liable for the rent, and all that Plaintiff can do is to repossess himself of the land.

8. *A* certainly has the word "ஓடாக" "instead," but in deciding a question of this kind it appears to the Court that the literal meaning of a word is not to be considered so much, as the meaning which the users evidently intended should be attached to it.

9. Plaintiff's father evidently rented the land with a view to profit, and it would be ridiculous to suppose that when using the word "instead" either party intended that it should have the meaning sought to be attached to it by the Defendant; for Plaintiff's father to have done so would argue him to be a fool.

10. Whether Defendant enjoyed the land or not is of no moment, he admits *A*; that he is the heir of the widow, and he signed rauzeenamah *D*, by which he bound himself to abide by *A*.

11. Decree below affirmed with costs.

THE 30TH JANUARY 1857.

Appeal Suit No. 57 of 1856.

Appeal from the decision of C. Vencatachelliah, Principal Sudr Ameen of Tinnevelly, under date 29th December 1855.

Theetharuppa Moodelly and 6 others, } (Plaintiffs,) Appellants.

C. J. Bird, Esq., Collector of Tinnevelly and 2 others, } (Defendants,) Respondents.

1. Plaintiffs sued to establish the liability of the village of Sainthemungalum for rupees 9,995, principal and interest under three bonds *C*, *S* and *T* dated 5th June, 22d December 1824 and 26th April 1835, respectively; under the 1st of which deeds, the 2d Defendant mortgaged the said village to 1st Plaintiff and Alaguppa Moodelly grand uncle of the Plaintiffs from 4th for rupees 1,956-9-0 for 24 years to which a sum of rupees 1,168-5-0 was added by *S* and rupees 1,880-0-0 by *T*. The 1st Defendant's predecessor, however, seized the village as appertaining to the Tinnevelly pago-

dah in the year 1838 and made it over to durkastdars. The Revenue Board referred the Plaintiffs to the Collector on the 17th March 1842 and the Collector referred them to a Civil suit. The subsequent delay in bringing the suit is ascribed to disputes between Plaintiffs and their cousins.

2. The 1st Defendant pleaded that the village in question was pronounced by the decree of the late Zillah Court in Suit No. 17 of 1819 and the decree of the Provincial Court in Appeal Suit No. 2 of 1822 to be the property of the Tinnevelly pagodah and that as its profits misappropriated the then Collector, Mr. Thompson, instituted a full enquiry and assumed the village under Cirkar management in 1838 and contended that so long as those decrees stand, it is his duty to maintain the right of the pagodah.

3. 2d Defendant admits *C*, denies *S* and *T* and pleads that *C* was discharged from the profits of the village while in the possession of the Plaintiffs.

4. Upon a motion presented by the supplemental Defendant stating that the village in question was granted to his ancestors by the Carnatic rulers, on account of a charitable and religious institution in the Tinnevelly pagodah, and that it should not be held liable to the Plaintiffs' claim, he was included as a supplemental Defendant.

5. The Principal Sudr Ameen decreed the 2d Defendant answerable for the amount claimed relieving the village from all liability on account of the debt and recorded his opinion that the supplemental Defendant was the party entitled to the village in question.

6. The Plaintiffs appeal and the 1st and 2d Defendants and supplemental Defendant answer them.

JUDGMENT.

7. The Court does not record the appeal objections or the answers thereto, as it is of opinion that the claim against the 1st and 2d Defendants must be rejected under Clause 4th, Section XVIII, Regulation II of 1802.

8. In 1838 the land mortgaged to Plaintiffs under *C* and which was in their possession up to that date was declared to be the property to the pagodah and taken from them.

9. Plaintiffs therefore ought to have brought their claim against the 1st and 2d Defendants before a Court of competent jurisdiction within twelve years from 1838; they did not however

do so before 1854; consequently their claim is barred under the law of limitation.

10. If the 3d Defendant considers himself entitled to the land in dispute, he must, if so disposed, prove his right by a regular suit.

11. Claim dismissed with all costs throughout.

THE 30TH JANUARY 1857.

Appeal Suit No. 58 of 1856.

Appeal from the decision of C. Vencatachelliah, Principal Sudr Ameen of Tinnevelly, under date 26th January 1856.

Somoo Ummal, (Plaintiff,) Appellant.

Veeravagoo Pillay, (Defendant,) Respondent.

1. The Plaintiff sued for the recovery of rupees 4,987-12-9, as being the principal rupees 3,400 and interest due on money lent by her to the Defendant on the 30th January 1850 on his verbal promise to repay the same within one year.

2. The Defendant denies having borrowed the amount sued for.

3. The Principal Sudr Ameen distrusting the evidence adduced to prove the cause, dismissed the case with costs.

4. The Plaintiff's appeal, in its present state, ought not to have been received, for it is a mere narrative and full of irrelevant matter; all that the Court can gather from it is, that the decree of the Lower Court is an unjust one.

5. Defendant in an equally wordy and irregular answer maintains the contrary.

JUDGMENT.

6. The Principal Sudr Ameen in his decree has entered upon questions wholly foreign to the matter at issue, and recorded points for the parties to prove the same; the only question to be pronounced on being whether the money was lent or not.

7. The Principal Sudr Ameen rejects the evidence to the loan as not being trustworthy and in that opinion the Court coincides.

8. Decree below affirmed with costs.

ZILLAH TRICHINOPOLY.

PRESENT: T. J. P. HARRIS, ESQ., CIVIL JUDGE.

THE 8TH JANUARY 1857.

Appeal Suits Nos. 187 of 1855 and 1 of 1856.

Appeal from the decision of Moulavee Syed Ghoolam Russool Saib, Moofty Sudr Ameen of Trichinopoly, dated 29th September 1855.

Appeal Suit No. 187 of 1855.

Soondrum Pillay and Moottoo Pillay, (8th and 9th Defendants,) Appellants,

versus

Sashadry Iyengar, (Plaintiff,) Respondent.

Appeal Suit No. 1 of 1856.

Seeneevasea Iyengar *alias* Samy Iyengar, (1st Defendant,) Appellant,

versus

Sashadry Iyengar, (Plaintiff,) Respondent.

1. The Plaintiff brought this suit to effect the redemption of 5 pungoos of land valued at rupees 525, alleged to have been mortgaged by him to Ramanooja Iyengar maternal grandfather of the 1st, 2d and 3d Defendants and father-in-law of the 4th Defendant; the amount of mortgage and interest due thereon having

been liquidated by the produce of the land; the Plaintiff further sued to recover rupees 275 being the amount of surplus produce derived by the Defendants from the land in question. The rest of the Defendants were included in the suit as having possession of portions of the land in question.

2. The 1st Defendant in his answer admitted the transaction of mortgage referred to in the plaint, but pleaded that on the 15th October 1814 the Plaintiff executed to Ramoonaja Iyengar alluded to in the plaint a deed providing that in the event of the Plaintiff failing to repay the amount of mortgage within a certain term, the said Ramanooja Iyengar should acquire an absolute right to the land at issue, and that he (Ramanooja Iyengar) accordingly became the absolute owner of the land in question in consequence of the Plaintiff having allowed the terms specified in the said deed to elapse without repaying the mortgage amount.

3. The 4th Defendant threw on the 1st Defendant the responsibility of meeting the demand of the Plaintiff.

4. The 7th Defendant in his answer stated that he held in mortgage 3 pungoos of the land in question which were redeemed by the 1st Defendant.

5. The 8th Defendant pleaded that the portion in his possession was purchased by him when sold at public auction by the Collector.

6. The reply supported the plaint.

7. The 1st, 4th and 8th Defendants filed rejoinders in support of their respective answers.

8. The suit was tried exparte as regards the 2d, 3d, 5th, 6th and 9th Defendants.

9. The Plaintiff filed 21 documents and cited 6 witnesses.

10 The 1st Defendant filed 11 documents and cited 2 witnesses.

11. The 4th Defendant filed 3 documents and cited 2 witnesses.

12. The 8th and 9th Defendants produced 1 document and examined 4 witnesses.

13. The Moofty Sudr Ameen discrediting the evidence produced by the 1st Defendant in support of his defence awarded the restoration of the land under litigation by the Defendants to the Plaintiff but disallowed his claim to surplus produce.

14. The 1st Defendant appeals in No. 1 of 1856 contending that he adduced both documentary and oral evidence in respect of the conditional deed of sale on which his defence was based, and that the Lower Court erred in rejecting that evidence.

15. The 8th and 9th Defendants appeal in No. 187 of 1855 against that part of the original decree which direct them to make over to the Plaintiff the portion of land purchased by them at public auction.

JUDGMENT.

16. The Court fully concurs in the recognition by the Moofty Sudr Ameen of the Plaintiff's claim.

17. The 1st Defendant himself admits the Plaintiff's right to the land in question as well as the fact of its mortgage by the Plaintiff to his (1st Defendant's) ancestor; the 1st Defendant has failed to make good his plea that the said land was transferred to his ancestor under a conditional deed of sale; this document from its antiquity is incapable of direct proof, the alleged attesting witnesses thereof being dead; the evidence of the 2 witnesses examined in support of it is of a secondary character and therefore inadmissible.

18. The 1st Defendant's allegation of having obtained the deed under a conditional deed of sale dated October 15th 1814 is invalidated by the Plaintiff's Exhibits *J, K, L*; which shew beyond all question that the 1st Defendant admitted in 1843 and 1849 the Plaintiff's ownership of the land in question as well as the circumstance of his (1st Defendant) merely holding a mortgage lien upon it.

19. The public sale of a portion of the said land by the Collector to the 8th and 9th Defendants in satisfaction of the arrears of revenue due by the 1st Defendant, cannot be upheld as the 1st Defendant had no lawful pretension whatever to the land.

20. The original decree is affirmed and these appeals dismissed with costs.

THE 15TH JANUARY 1857.

Appeal Suit No. 169 of 1855.

Appeal from the decision of Moulavee Syed Ghoolam Russool Saib, Moofty Sudr Ameen of Trichinopoly, dated 30th August 1855.

Tondavaroya Pillay, (5th Defendant,) Appellant,

versus

Balasoobramania Moodelliar, (Plaintiff,) Respondent.

1. The Plaintiff sued to recover rupees 2,197-12-4½, balance of principal and interest due on a bond executed by the 1st Defendant, Zemindar of Arealore, to the Plaintiff on the 22d March 1852, agreeing to repay the amount of the said bond by annual instalments from the produce of 2 of his Istimeera villages through the medium of the other Defendants who are inhabitants of those villages.

2. The 1st Defendant admitted the execution of the bond in question, but threw on the 2d Defendant and others the liability to the Plaintiff's demand.

3. The 2d Defendant admitted having executed an agreement to the Plaintiff engaging to pay the latter the revenue of the villages in question every year, but pleaded inability to carry out the terms of this agreement owing to the default of the under tenants in paying him the arrears of revenue.

4. The 5th Defendant asserted that in satisfaction of the debt due to him by the 1st Defendant the latter authorized him to appropriate the revenue due by himself (5th Defendant) and some others and that he owed nothing to the Plaintiff.

5. The 6th Defendant pleaded that he appropriated part of the revenue of the village in question under the authority given to him by the 1st Defendant who owed him a certain sum.

6. The 10th, 13th, 14th and 16th Defendants pleaded having paid to the Curnum the revenue due by them to the Zemindar.

7. The 8th and 26th Defendants concurred in the above answer.

8. The suit was tried exparte as far as it related to the 3d, 4th, 7th, 9th, 11th, 12th, 15th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 27th, 28th, 29th, 30th, 31st, 32d, 33d and 34th Defendants.

9. The reply denied the correctness of the answers of the Defendants.

10. No rejoinder was filed by any of the Defendants.

11. The Plaintiff filed 3 documents and cited 5 witnesses.

12. 7 documents were filed by the 5th Defendant, 1 by the 6th and 2 by the 8th.

13. 3 witnesses were examined for the 5th Defendant, 2 for the 6th and 2 for the 8th.

14. The Moofty Sudr Ameen passed a decree adjudging the Defendants to give the revenue of the villages in question to the Plaintiff every year from fuzly 1265 in discharge of the debt due to him.

15. Against this decree the 5th Defendant appeals repeating his original defence and pleading non-liability to the claim of the Plaintiff, since he (Appellant) did not execute any agreement to him (Plaintiff).

JUDGMENT.

16. The Civil-Judge is of opinion that the original decree is just and should be upheld.

17. It is manifest from the record that the 1st Defendant not only transferred to the Plaintiff the revenue of the 2 villages for the satisfaction of his debt, but also caused the 2d, 3d and 4th Defendants, who are the head men of the villages, to enter into a written agreement with Plaintiff, to collect the revenue from the ryots and pay the same to him; the Appellant who is one of the ryots has not the option of withholding payment of his quarter of revenue to the Plaintiff to whom it has been transferred by his (Appellant's) landlord, if any sum were due to the Appellant by the 1st Defendant, his course is to seek recovery by a law suit.

18. The Plaintiff in his plaint claimed payment of the revenue of the villages in question from fuzly 1262, but the Lower Court has erroneously adjudged the revenue from fuzly 1265 instead.

19. This part of the original decree is modified, so that the

Plaintiff may recover revenue from fuzly 1262 and the rest is affirmed with costs against the Appellant.

THE 20TH JANUARY 1857.

Appeal Suit No. 82 of 1855.

Appeal from the decision of Moulavee Syed Ghoolam Russool Saib, Moofty Sudr Ameen of Trichinopoly, dated 29th March 1855.

Erramareddy, (8th Defendant,) Appellant,

versus

Abeebsahibammaul *alias* Roshumbeebee, } (Plaintiff,) Respondent.

1. The Plaintiffs laid this action to recover 15 cheys of land valued at upees 500 inherited by them from Aulum Saib, father of the 1st Plaintiff and maternal grandfather of the 2d Plaintiff, and also rupees 919-12-0 the amount of excess of produce derived from the land by the Defendants who have possession thereof.

2. The 1st Defendant denied the claim in toto and pleaded that out of the 15 cheys of land in question 10 were sold to him and the 6th Defendant by the 1st Plaintiff's husband the 10th Defendant whom her (1st Plaintiff's) father Aulum Saib had constituted his heir under a hibbanamah; that of the remaining 5 cheys 4 were sold to him, 1st Defendant, by the deceased Nunneebeebee, the eldest daughter of the said Aulum Saib and 1 chey was sold at public auction in satisfaction of a decree, and that of the said 14 cheys he (1st Defendant) has sold 10 to the 8th Defendant and retains the remainder in his own possession.

3. The 6th and 8th Defendants expressed their assent to the above answer.

4. The 10th Defendant pleaded that he took an agreement from the 1st and 2d Defendants by which they bound themselves to give up the 10 cheys purchased by them from him.

5. The reply and rejoinders were filed by the Plaintiffs and 1st, 6th, 8th and 10th Defendants respectively.

6. The 1st Plaintiff presented a petition to the Moofty Sudr

Ameen stating that she received a mooktearnamah from Ructumbeebee one of her co-partners at a distant place, empowering her (1st Plaintiff) to institute a suit for the recovery of her (Ructumbeebee's) share of the land in question.

7. The Plaintiffs filed 5 documents and examined 6 witnesses.

8. The 1st and 8th Defendants produced 10 documents and 3 witnesses.

9. The Moofty Sudr Ameen having passed a decree in favor of the Plaintiffs, the 1st and 8th Defendants appealed to the Civil Court which confirmed that decree.

10. On a special appeal to the Sudr Court by the 8th Defendant the suit was remanded to the Lower Court for re-investigation and judgment de novo.

11. In the course of the re-investigation 2 witnesses were examined for the Plaintiffs and 3 for the 1st and 8th Defendants.

12. The Moofty Sudr Ameen observed that the 10th Defendant had no power to sell the land in question to the 1st Defendant without the concurrence of the Plaintiffs the legal owners of it; that even admitting the validity of this sale, the 1st Defendant was bound to surrender the land according to the tenor of the agreement executed by him to the 10th Defendant; that the statute of limitation was not applicable to this case; that the land in question (with the exception of 2⅓ chey sold at public auction) was legally divisible between 4 persons, viz. the present Plaintiffs, their co-partner Ructumbeebee who has executed to them a mooktearnamah and Rahimanbeebee who has instituted a Suit No. 174 of 1853 for the recovery of her portion of the land in question.

13. The Moofty Sudr Ameen accordingly passed a revised decree awarding the restitution by the Defendants of $9\frac{3}{16}$ cheys to the Plaintiffs and to the said Ructunbeebee, and further adjudging the 1st and 8th Defendants to pay to the Plaintiffs rupees 525, being the amount of surplus produce, and rupees 131-4 0 as the value of the portion of land sold at public auction.

14. Against this decree the 8th Defendant has brought forward this appeal.

JUDGMENT.

15. The Court observes that the Moofty Sudr Ameen was perfectly correct in deeming the Plaintiffs entitled to recovery of the land in question.

16. The reasoning on which this part of the decree is founded admits neither of cavil nor controversy.

17. The only portion of the original decree that bears an objectionable feature is the part adjudging the 1st and 8th Defendants to pay to Plaintiff the amount of surplus produce and the value of the land sold at public auction.

18. The record does not contain sufficient data for the Court to ascertain the precise amount of surplus produce, nor does it seem consistent with justice to saddle the 1st and 8th Defendants with the liability of paying the value of the produce of land sold at public auction.

19. The Court therefore modifies this part of the original decree and confirms it in all other respects, dismissing the appeal with costs.

THE 22D JANUARY 1857.

Appeal Suit No. 86 of 1855.

Appeal from the decision of Moulavee Syed Ghoolam Russool Saib, Moofty Sudr Ameem of Trichinopoly, dated 29th March 1855.

Erramareddy, (9th Defendant,) Appellant.

Ryman Beebee, (Plaintiff,) Respondent.

1. The Plaintiff sued to recover one-fourth share of her deceased father's estate, consisting of land, house, ground, jewels, ready money &c. all valued at rupees 351-2-0 as also rupees 427-14-0 being the amount of produce of the land in question, the Plaintiff's sister (the 1st Defendant) and her husband the 2d and other Defendants having possession of the whole of the estate in question.

2. It was contended by the 1st Defendant that her father left only 15 cheys of land and a small piece of ground and no other property; that she instituted a suit for the recovery of his land and obtained a decree in her favor which has been appealed against to the Civil Court; that she is ready to give a share of the land and ground to the Plaintiff provided she (Plaintiff) consent to give a portion of the costs incurred by her (1st Defendant) in the above suit.

3. The 2d Defendant denied all concern in the suit.

4. The reply and rejoinder supported the plaint and answer, respectively.

5. 4 witnesses were examined for the Plaintiff.

6. The 1st Defendant produced 2 documents and cited 6 witnesses.

7. The Moofty Sudr Ameen remarked it was only proved that the father of the Plaintiff left 15 cheys of land and a small piece of ground and that of this land the Plaintiff was only entitled to receive a fourth share of $12\frac{1}{4}$ chey, the remaining $2\frac{3}{4}$ chey being excluded as having been sold at public auction.

8. On these grounds the Moofty Sudr Ameen adjudged the Defendants to make over to the Plaintiff $3\frac{1}{6}$ chey of land and the 3d and 9th Defendants to pay rupees 175 as the amount of produce and rupees 42-12-0 as the value of the land sold at public auction.

9. Against this decree the 9th Defendant appeals, contending that of the 15 cheys in question he purchased 10 cheys from the 3d Defendant, who bought the same from the 2d Defendant; that the Lower Court was not therefore right in adjudging him (Appellant) to give a portion of this land to the Plaintiff and to pay the amount of produce and value of the land sold at public auction.

JUDGMENT.

10. The Court concurs in the propriety of the original decree save that part of it which excepts from the division, $1\frac{3}{4}$ chey sold at public auction in satisfaction of the arrears of revenue.

11. The 1st Defendant having improperly caused the public sale of this land is bound to make over to the Plaintiff out of her own portion $\frac{7}{8}$ chey, being the Plaintiff's share of $1\frac{3}{4}$ chey in question; the Plaintiff having been left so long out of her rights by the misconduct of the 1st and 2d Defendants, should look to them for payment of the produce of her portion of land which forms the subject of litigation in the suit.

12. In modification of the original decree the Court adjudges the 1st Defendant to make over the Plaintiff $\frac{7}{8}$ chey out of her own portion in addition to the $3\frac{1}{18}$ chey awarded to the Plaintiff in the original decree and to pay rupees 175 on account of produce, with all costs.

THE 26TH JANUARY 1857.

Appeal Suit No. 143 of 1855.

Appeal from the decision of Moulavee Syed Ghoolam Russool Saib, Moofty Sudr Ameen of Trichinopoly, dated 30th August 1855.

Caroppana Sarvagaren, (Plaintiff,) Appellant,

versus

1. Moottoosawmy Naicken,
2. Aurmooka Naicken, and
3. Sunnasy Naicken,

(Defendants,) Respondents.

1. This suit was brought to recover from 1st Defendant and his undivided brothers the other Defendants rupees 1,049-12-0 principal and interest on an agreement alleged to have been executed to the Plaintiff by the 1st Defendant on the 15th November 1852.

2. The 1st Defendant denied the execution of the agreement sued on and pleaded an alibi at the alleged date of the execution of that document.

3. The 2d and 3d Defendants took exception to the genuineness and validity of the agreement in question inasmuch as it was not signed by them.

4. The reply and rejoinder supported the plaint and answer respectively.

5. The Plaintiff filed 4 documents and cited 6 witnesses.

6. 8 witnesses were examined for the 1st Defendant.

7. The Moofty Sudr Ameen considered that the Plaintiff failed to establish the authenticity of the agreement which was the foundation of his claim; that on the other hand the plea of alibi set up by the 1st Defendant was supported by a weight of evidence which cannot be distrusted.

8. For these reasons the Lower Court dismissed the Plaintiff's claim with costs.

9. From this decree the Plaintiff appeals on the only ground that the Lower Court erred in the appreciation of the evidence produced by the parties respectively.

JUDGMENT

10. The Court having referred to the record is of opinion the Lower Court was correct in pronouncing the Plaintiff's evidence to be insufficient for the establishment of his claim and in giving weight to the testimony adduced on the other side.

11. To admit an appeal merely on the ground that the Lower Court did not duly appreciate the evidence would tend to give license for the institution of frivolous and idle appeals.

12. The original decree is affirmed and this appeal dismissed with costs.

THE 31ST JANUARY 1856.

Appeal Suit No. 168 of 1855.

Appeal from the decision of Moulavee Syed Ghoolam Russool Saib, Moofty Sudr Ameen, dated 20th September 1855.

Runganaigy Ummaul, (Plaintiff,) Appellant,

versus

Streenevassa Iyengar and Runga Charier, (Defendants,) Respts.

1. The Plaintiff laid this action to recover rupees 120-6-0, being the balance with interest of the value of a house purchased from her husband by one Cooppaniengar for rupees 230, of which sum the latter paid only rupees 125 and transferred to the 1st Defendant the responsibility of paying the remainder rupees 105 which with interest amount to the sum claimed.

2. The 1st Defendant in his answer met the claim with a total denial and pleaded that this suit ought to have been preferred by the Plaintiff's husband who is alive, and that he (1st Defendant) purchased the house referred to in the plaint from Cooppaniengar and afterwards transferred it to the 2d Defendant under a deed of sale.

3. The answer of the 2d Defendant corresponded with that of the 1st.

4. The reply supported the plaint.

5. No rejoinder was put in.

6. 3 witnesses were examined for the Plaintiff.

7. The Moofty Sudr Ameen dismissed the claim of the Plaintiff with costs distrusting the testimony of her witnesses in reference to the fact of the 1st Defendant having taken upon himself the liability to the Plaintiff's demand.

8. This has led to the institution of the present appeal by the Plaintiff.

JUDGMENT.

9. As this appeal merely involves the appreciation of evidence, the Civil Judge referred to the depositions of the witnesses examined for the Plaintiff, and finds nothing to justify the Court in depreciating the view which the Moofty Sudr Ameen took of the testimony of those witnesses, in the absence of documentary proof to the fact of 1st Defendant having undertaken to pay the sum sued for, the Court cannot admit mere oral evidence which is open to the objection raised in the original decree. Moreover the Plaintiff has allowed 7 years to elapse before bringing a suit.

10. The Civil Judge affirms the original decree and dismisses this appeal with costs.

SUBORDINATE COURTS.

ZILLAH BELLARY.

PRESENT: R. C. LEWIN, ESQ., ACTING SUBORDINATE JUDGE.

THE 2D JANUARY 1857.

Appeal Suit No. 103 of 1856.

Appeal from the decision of Ghoolam Mahomed, District Moonsiff of Taudmurry, dated 29th September 1856.

A. Gooruppah, (Defendant,) Appellant.

Somereddy, (Plaintiff,) Respondent.

1. This is an appeal preferred by the 2d Defendant against the decision of the District Moonsiff of Taudmurry adjudging the liberation of a puttah land, threshing floor, and 2 pootties of cholum, valued at rupees 140 which were sequestrated in satisfaction of a decree passed in his favor against the 1st Defendant, and to which the Plaintiff laid claim by virtue of a document marked *A*.

2. The grounds urged in appeal are;

1st. That from the primâ facie view of the document marked *A*, it will appear that some artificial means were used to give it an old appearance;

2d. That the 1st witness, a Curnum, as well as the 2d witness who performed their duty under the village Moonsiff (who is the Plaintiff's cousin and his 4th witness) have, at his (village Moonsiff's) instigation, deposed to the bond each alike to minute circumstances, which are impossible of recollection; therefore their evidence is unworthy of credence;

3d. That it has not been established that the Plaintiff cultivated the land in question last year;

4th. That the 1st, 4th and 5th witnesses who speak to the Plaintiff having shewed the bond when the attachment of the 1st Defendant's property took place, contradict each other, and that the statement of the 4th and 5th witnesses, that they have granted the receipts *B* and *C*, which being contrary to the custom of entering the receipts of khist money paid by puttah holders in the receipt book, is not trustworthy;

5th. That the 2d Defendant's witnesses 1st, 2d and 4th proved that the Plaintiff had not shewed the bond at the time of the sequestration of the Defendant's property; that the 7th and 8th witnesses, the residents of the same village, depose, that the 1st Defendant cultivated the land in question in the years 1854 and 1855, and the Plaintiff carried away the produce of the latter year; that the 1st, 2d and 4th witnesses deposed that the Plaintiff told them that he had taken away the produce of the year 1855, and secured it in his field; that the 2d and 3d witnesses allege, that the 1st Defendant paid revenue for the land and that they got it entered in the receipt book and that document I will also establish the same;

6th. The 2d Defendant further prays the Court will peruse the document No. I filed in Appeal Suit No. 104 of 1856, as the parties in that suit are the parties in this case.

3. The Plaintiff in appeal answer sets forth as follows;

1st. That the document *A* is not open to the objections raised by the Appellant;

2d. That the village Moonsiff (the 4th witness) gave his evidence on oath; that it was improper on the part of the 2d Defendant to say that the 1st witness performs his duty under the 4th witness, while he was a public servant;

3d. That his (Plaintiff's) witnesses deposed correctly;

4th. That the 1st and 4th witnesses state that the Plaintiff had shewn the bond at the time of the attachment;

5th. That it has been proved that Plaintiff has paid rent for the land and obtained the receipts *B* and *C*;

6th. That the evidence of the witnesses examined on behalf of the 2d Defendant contain numerous discrepancies.

JUDGMENT.

4. Admitting that the Plaintiff's witnesses deposed to the 1st Defendant borrowing the 80 rupees and executing the bond

A, and many other circumstances, still, as the 2d Defendant observes, the receipts *B* and *C*, are unusual. The Plaintiff's 4th and 5th witnesses certainly differ in their statements connected with the exhibition of the document at the time of the sequestration of the property. Plaintiff's claim is one to which great suspicion is naturally attached, and the fact of his being son-in-law to the 1st Defendant who gave in a cabool answer, does not detract from that suspicion. This Plaintiff too it must be remembered has instituted a suit for further property in Original Suit No. 22 of 1856 belonging to the 1st Defendant, claimed by him by virtue of a deed of sale in which also a cabool answer is filed by 1st Defendant; the house which is in this case the subject of litigation is also sued for by another son-in-law in Original Suit No. 145 of 1856 by virtue of a mortgage deed, document I, 1st Defendant's answer in Original Suit No. 256 of 1855, dated July 1855, in which Defendant denied being in a position requiring him to contract loans makes his cabool answer in the case at issue savour strongly of collusion.

5. On the enquiry consequent on Miscellaneous Petition No. 69 of 1856 Vencatah Condapah deposed that he had mortgaged puttah lands and house to Plaintiff for 60 rupees without referring to the deed of sale filed in Original Suit No. 22 of 1856 which he admits; this circumstance is enough to shew that 1st Defendant's statements do not deserve much credit.

6. On the grounds above detailed the Acting Subordinate Judge resolves to reverse the Moonsiff's decree, assessing Plaintiff with all costs.

THE 2D JANUARY 1857.

Appeal Suit No. 104 of 1856.

Appeal from the decision of Ghoolam Mahomed, District Moonsiff of Taudmurry, dated 29th September 1856.

Gooruppah, (Defendant,) Appellant,

versus

Somuppah, (Plaintiff,) Respondent.

1. The object of this appeal is for the reversal of a decree passed by the District Moonsiff of Taudmurry adjudging to Plaintiff a house and plain ground attached to it, valued at 100 rupees

which has been claimed by him by virtue of a deed of sale dated 13th December 1853.

2. The Appellant bases his appeal on the following grounds;

1st. That the 1st, 2d and 3d witnesses who speak to the execution of the document *A*, which has been fabricated by Plaintiff in collusion with his father-in-law the 1st Defendant contradicted each other and that the 2d witness is Plaintiff's brother-in-law;

2d. That the witnesses on behalf of the 2d Defendant have proved the 1st Defendant's alibi at the time of the execution of the document;

3d. That the Defendant's assertion in Document No. 1 that he is in the habit of lending money to others, will itself invalidate the Plaintiff's claim.

Appeal answer.

1st. The Plaintiff in his appeal answer states that the bond marked *A* was not fraudulently executed as stated by the supplemental Defendant and that its genuineness has been proved by his witnesses;

2d. That the Plaintiff's 2d witness is related to both parties and not only to him and that he has deposed to what he was aware on his oath;

3d. That the evidence adduced by him in no way invalidates his claim and is not open to any objection.

3. The Supplemental Defendant's witnesses have contradicted each other.

4. Although the Defendant maintained in his answer in Suit No. 256 of 1855 (Document No. 1) that he is not in the habit of borrowing money from others, yet the suit was decreed against him; therefore it is sufficient to shew that the Defendant was in the habit of borrowing money from others.

JUDGMENT.

5. On examination of the record for the purpose of ascertaining the validity of 2d Defendant's objections, it is apparent that discrepancies exist in the statements of the 1st, 2d and 3d witnesses for Plaintiff. The objection was not pleaded and therefore does not require much consideration. With reference to the 3d objection the Acting Subordinate Judge takes the same view as

he expressed in his decree in Appeal. Suit No. 103 of 1856, and the arguments used by 2d Defendant's Vakeel at the last hearing of that suit were reverted to at the last hearing of this. The fact of Plaintiff holding a deed of sale and allowing Vencatacondapah 1st Defendant to live in it for 2 years afterwards is very suspicious. The Acting Subordinate Judge regards the claim in this suit as well as in Nos. 103 of 1856, and 101 of 1856, as spurious, and therefore reverses the Moonsiff decree, assessing Plaintiff with all costs.

THE 3D JANUARY 1857.

Appeal Suit No. 101 of 1856.

Appeal from the decision of Ghoolam Mahomed, District Moonsiff of Taudmurry, dated 29th September 1856.

T. R. Somupah, (Plaintiff,) Appellant.

1. A. Venkala Condapah,
2. M. R. Somupah,
3. Suplt. Deft. A. Goorapah,

} (Defendants,) Respondents.

1. This is an appeal preferred by the Plaintiff to effect annulment of the decree of the District Moonsiff of Taudmurry, non-suiting his claim for the recovery of a house valued at 150 rupees on virtue of a document marked *A*. The grounds urged in appeal are as follows ;

1st. That the witnesses who deposed to the bond have not contradicted so much as to cause the Court to object their testimony; that the witnesses' relationship to the Plaintiff being through the 1st Defendant, they are not liable to exception ;

2d. That the Lower Court admits that the 1st and 2d Defendants failed to prove the points recorded to them ;

3d. That of the witnesses produced by the 3d Defendant to prove the alibi of the Plaintiff and his 2d witness, on the alleged date of the execution of the bond *A*, the 1st witness deposed that he left his village on the 2d Sooda of Asweja, and arrived at Damanacherla 8 days afterwards, and remained 2 days in the said village and started from thence on the 12th on which date the cotton was given ; that on the 11th, the sum of 4 rupees was borrowed from the 5th witness and a bond was written by him for the same ; whereas the other witnesses state that they remained

in the said village on the day of their arrival and the next day; that on the 3d day they had placed the cotton in a shop; that on the same day, the 5th witness lent money to the Plaintiff and exacted a bond, after which they started; that the 1st and 2d witnesses allege that the said bond was executed in an open place, and the 4th and 5th in a roofed house; therefore the Moonsiff erred in dismissing the claim on such incredible evidence.

JUDGMENT.

2. Plaintiff urges in appeal, that his witnesses' testimony is not objectionable on the score of contradictions; on referring to their depositions it appears that the 1st witness, writer of the bond, asserts, that the 2d arrived at the spot after 4 or 5 lines had been executed; whereas the 2d witness declares that he was there from the commencement; the former also describes the money as being tied up in Plaintiff's duppaty, whereas the latter says it was wrapped in his jacket.

3. Plaintiff's 3d witness deposes to the execution of the bond; this witness is 1st Defendant's son and while this witness deposes as above stated, his (3d witness') son who is 3d Defendant's witness swears, that Plaintiff was in another village at the time, which is a strange coincidence. The 3d objection made is tenable to a certain decree inasmuch as no primary evidence of the bond transaction alluded to is produced.

4. But in this case the onus probandi rested with the Plaintiff and the 1st para. of the Moonsiff's decree is strictly according to fact; therefore the Acting Subordinate Judge agrees with the Lower Court in the propriety of dismissing Plaintiff's claim. The appeal is dismissed with costs.

ZILLAH CALICUT.

PRESENT: W. HOLLOWAY, ESQ, JUDGE.

THE 3D JANUARY 1857.

Appeal Suit No. 266 of 1855.

Appeal from the decision of Soobrama Ayen, District Moonsiff of Temelprom, dated 29th June 1855.

Tekatha Raroo Nair,.....(1st Deft.,) 1st Applt.
Letchmy Amah,.....(2d ditto) 2d ditto

Poolliakat Ichara Menon,.....(Plff.,) Respt.

1. This suit was brought to recover 217½ fanams with interest alleged to have been advanced to the 1st and 2d Defendants who covenanted to deliver lands on an anubavom tenure which they never did.

2. The 1st and 2d Defendants pleaded that the deed was never executed and that no demise of lands ever took place and that the Plaintiff's claim is altogether false.

3. The 3d, 4th and 5th unnecessarily joined, all answered.

4. The Moonsiff considered the execution of the document and the advance of money by Plaintiff fully proved by Plaintiff's witnesses whose evidence received material support from the shuffling refusal of the Defendant to take or abide by an oath. He regarded the document produced to shew that there was no possibility of demising the lands at the time asserted, they having been previously passed to 3d and 4th Defendants, documents simply concocted by collusion between the 1st and 2d Defendants and the 3d and 4th members of the same family. He deemed no weight attachable to them, and decreed as sued for with costs.

5. In appeal the 1st and 2d Defendants contend;

i. That the document was never executed;

ii. That their documentary proof shewed that there could be no ground for such execution.

6. In answer, original Plaintiff,

i. Reiterates the matter of the oath and Defendants' refusal;

ii. The case was fully proved.

JUDGMENT.

7. No ground has been shewn to lead me to doubt the correctness of the Moonsiff's conclusion that the money was received by 1st and 2d Defendants from Plaintiff and the document (*A*) sued upon executed by them in Plaintiff's favour. The Moonsiff has probably arrived at a correct conclusion that the document 1 was collusively concocted after the date of this transaction, but in truth this evidence is altogether irrelevant, for if Defendants received money professing to convey a certain right and by their own fraud failed to do so, or if they pretended to convey rights which they had not from their having previously passed them to others, the vendee is entitled to recover his money.

8. This is precisely the case here. There can be no doubt that the money sued for was received under pretence of conveying a certain right, and that it was never conveyed. It matters not why the action for money had and received lies against the Defendants. The Moonsiff should not have allowed a plaint of so unnecessary length to be filed. The cause of action could be stated in 6 lines. He should also have refused to join the 3d, 4th, 5th and 6th Defendants in this action on a simple contract. This appeal is dismissed with costs.

THE 5TH JANUARY 1857.

Appeal Suit No. 283 of 1855.

Appeal from the decision of Corotta Ramoony, Acting District Moonsiff of Kootnaad, dated 17th July 1855.

Munheputa Manakel Parameshooran Buttatherypad; by Vakeel Sheshom Putter, } (Plaintiff,) Appt.

Karooparambil Kittapa Nair,.....(1st Deft,) 1st Respt.
Paddathavittil Kelloo Menon,.....(Suppl. do.) 2d ditto.

1. The original suit was brought to procure the restoration of a parcel of land alleged to be held by the Plaintiff on kanom and to be wrongfully detained by the Defendant under an order of the magistracy. Former letting on pattom to 1st Defendant and return by him were alleged.

2. 1st Defendant pleaded that he held under the 3d Defendant and that the Plaintiff had no rights.

3. The 2d Defendant did not answer.

4. The 3d in a miscellaneous petition, which ought not to have been received, asserted that he had purchased a higher right than that of the Plaintiff. His request that the case should be heard by the Pattamby Moonsiff because one Defendant was within the jurisdiction of the Moonsiff of Cartanaad was disposed of by the Civil Court on 28th April 1855 directing the Cartanaad Moonsiff to hear the case.

5. The Moonsiff considered the right of the Plaintiff to a kanom over the land indisputably proved and awarded pattom at the rate of 96 parrahs of paddy holding himself barred from awarding more by Act II of 1825. He then proceeded to say that the land could not be returned to Plaintiff because he did not consider it proved that the Defendant held under him. The ground of this opinion was that no pattom chit existed, and that there was no proof of the land having been returned by Defendant, that transaction not having been evidenced by any document. He ordered each party to pay his own costs.

6. In appeal the Plaintiff contends;

i. That his right to the return of the land was fully established by the evidence; that the taking of documents of release from mere holders on a yearly rent is not customary;

ii. He asserts his right to receive pattom at the rate of 200 parrahs for which he was able to let it.

7. No answer was filed in appeal.

JUDGMENT.

8. It is manifest that the Moonsiff's decree is altogether inconsistent with itself. The awarding of pattom to the Plaintiff could only be justified on the supposition that a contract of tenancy existed between Plaintiff and Defendant. To treat the sum awarded as the interest of a money lien held by Plaintiff on the land is a complete misapprehension, for no right to exact such interest from a mere tenant can even be conceived to exist. It is clear that either the Plaintiff has no right to the amount awarded, or, he is entitled to the return of the land also. I conceive it to be clearly established by the evidence of witnesses that the 1st Defendant once held this parcel and another as Plaintiff's yearly tenant and that the land was returned by him to Plaintiff who then passed it to another. From that period the tenancy of the 1st Defendant was under the Plaintiff and that the Plaintiff is entitled to the return of the land with the pattom proved by the witnesses for the Plaintiff, to be a fair remuneration for the letting of the land, 200 parrahs of paddy per annum. No antagonistic proof whatever has been adduced and the evidence of Plaintiff's witnesses is wholly uncontradicted. The very miscellaneous petition of 3d Defendant under whom the 1st asserts himself to hold, admits the right held by the Plaintiff, but alleges the purchase of a higher right by himself and a subsequent demise to the 1st Defendant. This connected with the Plaintiff's affirmative proof shews clearly that the 1st and 3d Defendants have colluded to make what may be a right of action in the 3d Defendant a right in possession. Deeming it clear that the 1st Defendant under the order of the Magistracy is a mere trespasser whom the Plaintiff has elected to treat as a tenant-at-will, I reverse the decree of the Lower Court and decree the return of the land with balance of pattom at the rate of 200 parrahs of paddy from the date of the Magistrate's order to the date of execution of this decree. All costs will be paid by 1st Defendant.

THE 5TH JANUARY 1857.

Appeal Suit No. 284 of 1855.

Appeal from the decision of Kondy Menon, District Moonsiff of Cacherry, dated 9th June 1855.

Athikot Puker, (2d Defendant,) Appellant.

Teeroomangalatha Shungaren Moossadoo, (Plaintiff,) Respondent.

1. This suit was brought to recover a paramba alleged to have been passed in 1021 (1845-46) on a renewed kanom deed to the 1st Defendant and of which the pattom remained unpaid from that time.

2. The 1st Defendant of course joined to make the admission, consented to the matter of the plaint and excused his non-payment of pattom on the ground that his default arose from his sublessee, the 2d Defendant, not paying what was due to him.

3. The 2d Defendant denied the whole case asserted by Plaintiff and 1st Defendant and alleged the purchase of a kanom claim by his family in 1002 (1826-27) and of the jenm right from the proprietor in 1029 (1853-54).

4. The Moonsiff remarked that the Plaintiff's witnesses supported his case and that the admission of the 1st Defendant tended in the same direction; that although ordered to do so the 2d Defendant had not produced proof of the residence of the jenm right from the person whose immemorial right he alleged it to be and from whom he asserted the purchase in 1029 (1853-54). He declined the determination of the question of jenm right raised and with an unimportant modification not the subject of appeal decreed as sued for.

5. In appeal the 2d Defendant alleges;

1st. That his case was fully proved;

2d. That the non-production of the pymash arose from the account of 982 (1806-7) having been destroyed and to the case having been decided before he could procure those of other years.

6. No answer was filed in appeal.

JUDGMENT.

7. The original suit was brought to eject a person whose

family is admitted by 1st Defendant's witnesses to have been 20 years in possession and to have paid the revenue for the whole of that period. To enable the Plaintiff to recover he must prove a tenancy in 2d Defendant derived from his own lessee the 1st Defendant. Of course it is clear that these parties are really one in this suit and the admission is in the absence of proof that the right of 2d Defendant was derived from the 1st of no weght whatever against that 2d Defendant. I discredit the whole transaction, the document evidencing the renewed grant of kanom in 1021 has been so doctored that it might represent a transaction of 5 times the age. Not a single voucher has been produced to shew the transfer from 1st to 2d Defendants. No proof of payment of a single fraction upon land which he and his family have so long possessed has been produced. The vague evidence of a set of witnesses as to the derivative right is all that appears. It is uncustomary for a person in the alleged position of 2d Defendant to pay the Government revenue because this is an act of great publicity and importance and calculated to attenuate the title of one under whom the payor claims. In this case the evidence of the Defendant as to the derivation of his title appears to me entitled to much greater weight than that of Plaintiff. His evidence is supported by the all important fact of possession, so long undisturbed, although his alleged lessor had to obtain a renewal of his own title in 1021 and by documents apparently genuine, but upon which I need not here pronounce. Not a tittle of evidence beyond vague verbal statement exists to shew that his title was derived from Plaintiff through the 1st Defendant who is clearly the mere tool of the Plaintiff and has in that capacity adduced evidence to support Plaintiff's case. Even that verbal evidence is much attenuated by the appearance of the document evidencing this admitted demise leading strongly to the suspicion that it was concocted after 1st Defendant had agreed to the part of convenient friend without whom a Malabar suit is never brought.

8. On the short ground that the Plaintiff has altogether failed to shew that the right of 2d Defendant which he has possessed for a lengthened period was derived from himself, I reverse the decree of Lower Court and dismiss the Plaintiff's case with costs original and appeal.

THE 7TH JANUARY 1857.

Appeal Suit No. 261 of 1855.

Appeal from the decision of Kondy Menon, District Moonsiff of Cacherry, dated 18th June 1855.

Keerotha Hoossan ; by Vakeel Rama Menon, } (Defendant,) Appellant.

Payingalat Karookundy Coonhy Moideen ; by Vakeel Sheshom Putter, } (Plaintiff,) Respondent.

1. The original suit was brought to recover rupees 89, balance of principal with interest upon a bond alleged to have been executed by Defendant in 1023 (1847-8) and rendering the amount payable by Kani 1024 (September, October 1848).

2. The Defendant admitted execution at the request and for the debt of another and pleaded payment of all but 3 rupees.

3. The Moonsiff in his usual inflated language observed that in the absence of all proof of payment, the balance must be awarded according to the plaint with interest.

4. In appeal the original Defendant ;

Prays for the disallowance of this interest on the ground that there is no mention of it in the bond.

JUDGMENT.

5. This appeal is of course rejected. It does not require express stipulation in a bond to render interest payable upon such sum as remains unpaid at the prescribed time of payment. The decree is of course correct in awarding interest on the unpaid balance from the date of breach. The conduct of this Appellant has been most dishonest and his appeal is dismissed with a fine of 5 rupees, under the provisions of Section XXXV, Regulation IV 1802.

THE 7TH JANUARY 1857.

Appeal Suit No. 291 of 1855.

Appeal from the decision of Mr. J. D'Silva, District Moonsiff of Calicut, dated 30th June 1855.

Pooligacherry Sithy Cootty; by Vakeel Naraina Iyen, } (1st Defendant,) Appellant.

Kooroongote Ramen Nair, (Plaintiff,) 1st Respondent.
Palakoonatha Oony Chathan Nair; by Vakeel Syed Latiff, } (2d Defendant,) 2d ditto.

1. The original suit was brought to recover on account of 2 years' arrears of pattom a parcel of land alleged to have been passed to 1st Defendant on kanom in 1025 (1849-50).

2. 1st Defendant admitted the demise on kanom but alleged that his transfer to the 2d Defendant barred his liability to pay pattom.

3. 2d Defendant did not answer.

4. The Moonsiff observing that no proof whatever had been adduced by Defendants that there was not pattom in arrear, he decreed the return of the land with the pattom sued for recoverable from 1st Defendant.

5. In appeal the original 1st Defendant urges that he was unable to adduce proof, and that having transferred the land to the 2d Defendant. No ground exists for the payment by him.

6. The 2d Defendant in appeal answer urges that he has acquired a higher right on this and other parcels, and no ground therefore exists for returning the land to Plaintiff or for the payment of pattom.

7. The original Plaintiff answered that the alleged transfer to the 2d is false and that the appeal has been brought only to gain time.

JUDGMENT.

8. It is clear that both the 1st and 2d Defendants are demisees of the Plaintiff and that no other question can be consider-

ed in this suit than those raised in the Court below whether the right to return exists and who is liable for the balance of pattom. The 1st Defendant cannot shift his liability by transferring the land to another. The right of Plaintiff to sue the person with whom he contracted is unquestionable and it matters not into whose hands the land which is the consideration for the contract has passed. This appeal therefore as to non-liability for pattom cannot be sustained. No proof whatever has been adduced of the matter subsequent by which 2d Defendant alleges the liability to to have been removed. There is little doubt that the statement is false, but whether true or false as he with ample opportunity has not chosen to assert and prove it in the proper place, his present bare statement cannot affect the result of this appeal which is dismissed with costs original and appeal to be paid by the original 1st Defendant.

THE 7TH JANUARY 1857.

Appeal Suit No. 292 of 1855.

Appeal from the decision of C. Ramoony, District Moonsiff of Kootnaad, dated 31st July 1855.

Mayahemethel Chadayen Cootty, (Plaintiff,) Respondent.

Ecyooran Kalatheta Koroo *alias* Karoo, } (Defendant,) Appellant.

1. The original suit was brought to recover the price of 300 cocoanuts and of 57 parras and 6½ edungalies of paddy on a document alleged to have been executed by Defendant at a settlement of accounts and which stipulated in case of non-delivery by prescribed instalments for payment at the rate of 5 fanams the 100 cocoanuts and one fanam the parra of paddy.

2. Admitting the execution of the document sued upon, the Defendant alleged that he had received nothing thereupon, but that the document was executed to provide for a loan which Defendant did not receive.

3. The Moonsiff remarked that the mere contradictory statement of Defendant shewed that not the slightest weight was to be given to his defence and the transaction sued upon being proved, he decreed in Plaintiff's favor 48½ fanams and 4 cash, disallowing the surplus as illegal profit.

4. In appeal, the original Plaintiff contends that this should not have been disallowed.

JUDGMENT.

5. I am unable to see ground for the Moonsiff's disallowance of any portion of the money for which the document stipulated. The parties made their own contract and must be taken to have understood their own interest. The Plaintiff very wisely, as Defendant's subsequent conduct shews, stipulated for a certain payment which should include liquidated damages for the breach of contract and Defendant consented to pay the sum. Looking at the period for which a dishonest Defendant can withhold a Plaintiff's rights, there is nothing unreasonable in the proceeding, and I resolve to modify the Moonsiff's decree by awarding to Plaintiff the sum disallowed. Interest will run only from the date of this decree. All costs will be paid by the Defendant below

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THE 7TH JANUARY 1857.

Appeal Suit No. 293 of 1855.

Appeal from the decision of Kondy Menon, District Moonsiff of Cacherry, dated 30th July 1855.

Nambanoor Iyagel Rarapa Nair,.....(Plaintiff,) Appellant

Kovil Valiagatha Madathil Padah (female)...(1st Deft.,) Respt.

1. This suit was brought to recover 65 fanams with interest upon a document of the nature of a mortgage deed professing to convey this right from 1st Defendant to 3d and which that Defendant had transferred to the Plaintiff. It was alleged that the land was never delivered.

2. The 1st Defendant answered that she had transferred the right to 3d Defendant and the land over which it existed with it.

3. The 2d Defendant did not answer.

4. The 3d answered that he had never transferred the document to the Plaintiff as alleged, but that she had taken possession of it in its place of deposit and forged the release.

5. The Moonsiff remarked that the execution of the document by the 1st Defendant to the third was admitted by that 1st

Defendant and that its transfer by the 3d to the Plaintiff was fully proved by the evidence as also that the lands over which the right is alleged to exist, had always been in the hands of the 1st and 2d Defendants and had never passed to the Plaintiff or 3d Defendant. He however decreed the payment of the amount with interest by the 3d Defendant:

6. In appeal the original Plaintiff contends that the decree should be against the 1st Defendant.

JUDGMENT.

7. In the absence of any denial by 1st Defendant and of appeal on the part of 3d Defendant, it seems clear that on the fact of execution by 1st Defendant, and transfer through the 3d to the Plaintiff as well as on the non-delivery of the land on which the amount was secured, the Moonsiff's decision is correct. Here however the party ultimately liable for the demand is clearly the 1st Defendant, the grantor of the document upon which the Plaintiff sues. The assignment of such documents as these is unfortunately legalized and I am bound therefore to modify the Moonsiff's decree by decreeing the principal sum to be paid by 1st Defendant with interest, on account of long delay and gross negligence, only from the date of plaint. All costs will be discharged by 3d Defendant who has offered the only resistance to the Plaintiff's case.

THE 7TH JANUARY 1857.

Appeal Suit No. 310 of 1855.

Appeal from the decision of Kondy Menon, District Moonsiff of Cacherry, dated 26th December 1854.

Kothoor Oony Peraven; by Vakeel Kanden,..... .....(Plaintiff,) Appellant.

Velliat Kooyil Kandotty; by Vakeel Syed Latiff,.....(Defendant,) Respondent.

1. This suit was brought to recover rupees 25-4-0 alleged to have been given to assist in defraying the expenses of a ceremony. The plaint further alleged that the Defendant had not, as he was bound to do, assisted Plaintiff when in his house he came to perform a ceremony.

2. The Defendant denies the advance of money pleaded.

3. The Moonsiff did not consider the advance of money by Plaintiff proved, for the witnesses knew some of the matter and not other part of it. It is easy to get such witnesses, and although the witnesses who speak on Defendant's behalf that no money was advanced were guilty of discrepancies. After much more of most obscure language, the Moonsiff dismissed the suit with costs.

4. The Plaintiff in appeal urges, that there is really no valid objection to the evidence of Plaintiff's witnesses.

5. In answer the original 1st Defendant, 1, urges that the original decree should be sustained. 2. That it is not the custom to bring such action as this.

JUDGMENT.

6. I can see nothing in the Moonsiff's objections to the Plaintiff's evidence, and his decree appears to me composed of a set of very vague assertions couched in very obscure and enigmatical language. These witnesses appear to me to prove what is in itself highly probable that the Plaintiff, a relation of Defendant, attended a marriage of Defendant and gave the sum now sued for. The witnesses have deposed also that it is the custom of the caste upon a similar solemnity occurring in the family of the giver for the receiver to exercise increased liberality. I am of opinion that the Plaintiff has no cause of action. According to his own statement of the case, the giving of the money and the amount to be given on the first occasion of the kind are altogether optional, there is no promise to repay; but it is understood that similar or rather greater liberality will be shewn on occasion arising. Such understandings as these can raise no legal obligation. The money given was a gratuity; there was neither express nor implied promise to repay it; the amount to be repaid is altogether vague and indeterminate and a mere moral right exists. The Defendant may be a shabby fellow for acting as he has done, but a mere moral obligation will not even sustain an express promise and is still less sufficient to raise an implied one. The most mischievous consequences must ensue upon an attempt to convert Courts of Law into schools for the determination of mere questions of morals and manners.

7. Deeming it clear that the right which Plaintiff imagines himself to possess is not one which is appreciable either by the Law or the Courts which administer it, that the money advanced by the Plaintiff was a pure gift, I dismiss this appeal with costs.

THE 8TH JANUARY 1857.

Appeal Suit No. 294 of 1855.

Appeal from the decision of Mr. J. D'Silva, District Moonsiff of Calicut, dated 5th June 1855.

Poodiakovilagom Parambil Parkum Sookalingom Pillay, } (Defendant,) Appellant.

Mooriat Syed Ally; by Vakeel Ramen Menon, } (Plaintiff,) Respondent.

1. This suit was brought to recover rupees 23-12-0 acknowledged by Defendant to be due at a certain settlement of accounts, and for which the Defendant is alleged to have pledged a silver girdle worth rupees 6-8-0 and executed the document sued on.

2. The Defendant answered that the whole transaction asserted is false; that his father had pledged the girdle which is liable to return on payment of rupees 3-8-0.

3. The Moonsiff found for the Plaintiff believing the genuineness of the document sued upon and discrediting the alibi set up, both because the matter of it was not stated in the answer and because the witnesses answered readily and without hesitation on every matter enquired into, whether requiring consideration or not.

4. In appeal the original Defendant urges that his absence on duty was fully proved by the witnesses, and that no ground has been shewn for discrediting them.

5. In appeal answer the original Plaintiff. The witnesses for Defendant are unworthy of belief.

JUDGMENT.

6. It is necessary to alter the Moonsiff's decree by declaring that on the return of the girdle pledged, the Defendant shall pay the principal rupees 23-12-0 with interest from the 8th October 1854. On the question of fact I concur with the Moonsiff and can entertain no doubt that the document was executed by the Defendant. The Plaintiff's proof asserts it and the alibi which has been attempted utterly fails. Absence at Byepoor with the Ameen even if proved to have occurred, would by no means shew that this document could not have been executed in Calicut during the period of absence. Moreover the evidence to the point is utterly worthless. The doubtings, evasion and hesitation are most

conspicuous and one *honest* man speaking in doubt as to the time of arrival, undertakes to speak to the disposal of the whole of Defendant's time during the stay. Their statements and the absurd manner in which they have undertaken to account for their certainty on the subject are equally ridiculous. The omission however of the statement of the alibi in the answer should not have been given by the Moonsiff as a reason for discrediting it The entry of mere matter of evidence in an answer should always be discouraged and the strange ideas entertained by the Lower Courts of pleading, lead more than any other cause to the excessive prolixity of legal proceedings. Here it is clear that the alibi was relevant evidence under the plea of never executed and it would have been irregular to set it forth. This appeal of a man who has indulged in a shameless concoction of perjured evidence is dismissed with a fine of 5 rupees, under Section XXXV, Regulation IV of 1802.

THE 8TH JANUARY 1857.

Appeal Suit No. 296 of 1855.

Appeal from the decision of Kondy Menon, District Moonsiff of Cacherry, dated 27th July 1855.

Wellayil Parkum Mamy ; by Vakeel Sheshom Putter, } (Plaintiff,) Appellant.

Modachalil Moideen,..... (1st Deft.,) 1st Respt.
Madathil Moideen Cootty,..... (2d do.) 2d do.

1. The original suit was brought to recover 17 months' hire of a boat and the boat itself or its price rupees 22-8-0. The hire was at the rate of ½ rupee per month and 8½ rupees were asked.

2. Defendants answered that they had never hired a boat as alleged and proceeded to enter into a long argument to shew that they could not have done so. They alleged the suit to have arisen from enmity of the Plaintiff.

3. The Moonsiff discredited the evidence of Plaintiff, remarking that it was impossible to believe that the Plaintiff would have lent a boat and still less one which he had borrowed of another without obtaining some written acknowledgment. Further, adverting to discrepancies in the evidence, he dismissed the Plaintiff's case with costs.

4. Plaintiff appeals on the ground that the evidence has been misappreciated.

5. No answer was filed in appeal.

JUDGMENT.

6. I am unable to concur with the Moonsiff. The lending of boats in the manner described during the press of a merchant's business is by no means so uncommon as the Moonsiff states. The presence of the owner of the boat at the time of lending altogether removes the further improbability which the Moonsiff considers of so much importance. It was very natural and is not uncommon for a man dealing with men of another caste to operate through the agency of a man of their caste. Further, I cannot fail to be struck with the singular air of truthfulness which pervades the evidence of Plaintiff. The witnesses instead of mere vague assertion speak of the loan, of the place of loan and its circumstances, and the first witness actually speaks of the boat as then existing, of its place and of its condition. Here was matter capable of rebuttal and which would not have been stated if the transaction had been a pure invention. On the other side I find three mere coolies produced to speak to the possession of several boats by the Defendants and to their never having had occasion to borrow one. Nothing is clearer from the whole course of their examination than that they are speaking on matters of which they know nothing and that the Plaintiff's case is altogether unanswered. It is easy to see that a concocted case might and would have been constructed of more promising materials. The delivery or non-delivery of a boat is a very substantial fact capable of distinct proof or denial. Considering the Plaintiff's case proved, I decree the payment of hire at the rate of 8 annas per month from 15th Toolam 1028 (29th October 1852) to the date of the Defendant's answer in the Lower Court 26th Mithunom (8th July). As he has altogether denied the receipt of the boat, I further decree the payment of its price rupees 22-8-0, interest on these two amounts will run from the date of the answer in the Lower Court. All costs original and appeal will be paid by the Defendants below.

THE 8TH JANUARY 1857.

Appeal Suit No. 297 of 1855.

Appeal from the decision of Kookel Kelloo Nair, District Moonsiff of Shernaad, dated 27th July 1855.

Maliavittil Oomur Cootty, (Defendant,) Appellant.

Pooderry Ramoony Nair, (Plaintiff,) Respondent.

1. The original suit was brought to recover rupees 79-0-11 with equal interest upon a document alleged to have been executed by Defendant on condition of Plaintiff not procuring the imprisonment of Defendant's father in execution of a decree against that father.

2. Defendant answered that he never executed the document sued upon but that at the time of its alleged date he was only 12 or 13 years old.

3. The Moonsiff observed that the execution by Defendant, of the document sued upon for the cause stated, was fully proved as also that the Defendant was not a minor at the date of alleged execution ; this fact he further considered clear from the Defendant's appearance and attributed his non-production of evidence which he had promised to produce, to his unwillingness to render the witness liable to a charge of perjury. He decreed as sued for.

4. In appeal ;

1st. Defendant reiterates non-execution ;

2d. Makes a rambling statement that he was prevented from producing evidence by the relationship of Plaintiff to the adhikary.

5. No answer was filed in appeal.

JUDGMENT.

6. The pretence that Defendant's witnesses did not attend through the fraud of the adhikary is plainly false. It clearly appears that Defendant frequently attended Court, well knew that the case was under investigation and was duly served with the several notices of the Court to which he declined attending in order to leave open this fruitful but stale ground of complaint

I concur with the Moonsiff in considering the execution of the bond proved to prevent the conveyance of Defendant's father to prison. A man's forbearance of his legal rights at the request of a third party is a good consideration for a promise of the party requesting, although no pecuniary benefit may accrue to the promisor by such forbearance. As the Moonsiff has inspected the record of the suit for the satisfaction of the decree in which the Defendant's father was taken in execution, and has found that the private arrangement was duly notified to the Court, I confirm the Moonsiff's decree and dismiss this appeal with costs.

THE 8TH JANUARY 1867.

Appeal Suit No. 306 of 1855.

Appeal from the decision of Kondy Menon, District Moonsiff of Cacherry, dated 27th July 1855.

Kootoopatta Nambiar,..... (1st Defendant,) 1st Appellant.
Eeyan Kandy Ookundan,..... (15th ditto) 2d Applt.

Chalaporatha Eresha,..... (Plaintiff,) Respt.

1. The original suit was brought to recover from the Defendants as heirs of the lessee 2,544 edungalies of paddy and rupees 31-0-7 principal and interest on account of the rent of 2 parambas let on simple rent to the deceased karnaven of Defendants 1 to 14. The return of the land was also asked.

2. No answer was filed in the Lower Court.

3. The Moonsiff considering the execution of the contract proved, and the balance of pattom due also proved, and in the absence of any answer on behalf of Defendants no reason existed to suspect the Plaintiff's case. The decree did not affect any right of 15th and 16th Defendants. He allowed the price of paddy at 100 edungalies 5 rupees instead of the rate asked and otherwise decreed as sued for with costs.

4. In appeal the 1st and 15th Defendants urge ; 1st. That no answer was presented in consequence of some negociations as to the deduction of revenue paid ; 2d. They asked the reception of proof as to these amounts.

JUDGMENT.

5. I decline entering into the question raised for the first

time in appeal by these Defendants whether the Plaintiff is or is not bound to pay certain sums advanced on account of revenue. In the contract fully proved in the Lower Court and by implication clearly admitted by the Appellant, there is no provision whatever for the payment of revenue. If therefore the Defendants have advanced money at the request of Plaintiff which that Plaintiff was legally compellable to pay, this is a good cause of action but one perfectly separate from their liability on this written contract in which they must be taken to have entered the whole agreement between them. The matter now raised being entirely new, and if true clearly a new cause of action for money lent, I confirm the decree of the Lower Court and dismiss this appeal with costs.

THE 14TH JANUARY 1857.

Appeal Suit No. 232 of 1855.

Appeal from the decision of Mr. M. D'Silva, District Moonsiff of Pynaad, dated 26th May 1855.

Adamoly Rarapen Nair, (Defendant,) Appellant.

Payengot Ooken styled Takadet Nair, (Plaintiff,) Respt.

1. The original suit was brought to recover a parcel of land alleged to have been let to the Defendant with the balance of rent due rupees 52-0-4.

2. The Defendant in a confused answer admitted the letting and practically the outstanding balance, but alleged that he had a right of tenancy for 10 years because he had paid money. He also alleged as a set off a debt of Plaintiff's son which Plaintiff had promised to pay.

3. The Moonsiff remarked that there was proof of a right to hold for 10 years and that if the property was returned in Meenon 1032 (March, April 1856) it would be sufficient. The alleged set off was not proved and he decreed as sued for with the exception of rupees 5-11-10.

4. In appeal Defendant urges, that he is entitled to the set off of rupees 20½ with interest.

JUDGMENT.

5. There is no ground for this appeal. The promise to pay

a debt due by the son does not disclose a good consideration and if it did, it could not be pleaded as a set off to this action for money due upon a special contract. If such promise was given for a good consideration, it constitutes a good cause of action, but cannot be pleaded as a set off in this case. Each party has a separate right of action on considerations and contracts perfectly independent.

6. The Moonsiff has acted with entire irregularity in decreeing the prospective return of land. If no right of return existed at the date of plaint and still more at the date of decree, it is not in the power of a Court to determine when such rights do arise how they shall be disposed of. This part of the Moonsiff's decree is cancelled, and the fact of a right to hold for 10 years being undisputed by the Plaintiff, all costs to be paid by the Plaintiff below.

THE 16TH JANUARY 1857.

Appeal Suits Nos. 221 and 231 of 1855.

Appeal from the decision of Mr. W. Stewart, Acting District Moonsiff of Ernaad, dated May 1855.

	No. 221	No. 231
Parapen Kamoo . ... (Plaintiff,) Appellant.		
Tiroomangalatha Naranen Namboodry.	(1st Deft.,) 1st Respt.	(1st Deft.,) Appt.
Pooliarah Shangaren Namboodry.....	(2d ditto) 2d ditto	(2d ditto) Respt.

1. The original suit was brought to recover rupees 60-1-3, the price of a teak tree which the 1st Defendant had contracted to sell to the Plaintiff and the delivery of which had been prevented by the 2d Defendant.

2. In answer the 2d Defendant admitted the contract, asserted his title to sell but denied the receipt of more than 1 rupee and said that he had sold only 3 rupees worth of wood.

3. The 2d Defendant denied all title of the 1st Defendant to the place on which the tree sold was situated and asserted the purchase of it from the father of 1st Defendant.

4. The Moonsiff considered the documents filed by 2d De-

fendant clearly to prove the sale of the jenm right to him and altogether to negative the right of interference of 1st Defendant. These documents consisted of a jenm deed (1) dated 994 (1818-19) and a further deed in affirmance of this. There being no proof of the value of wood to delivered, the Moonsiff nonsuited the Plaintiff.

5. In appeal the original Plaintiff under No. 221 contends that the purchase of the wood and its value were fully proved by his witnesses, and that he was entitled to recover.

6. In a long and rambling statement under No. 231, the 1st Defendant; 1st, denies the sale by his father to 2d Defendant's family and contends that his right was proved; 2d, non-filing of documents through the fault of the Vakeel and tender of a variety of documents is made.

7. No answer was filed in appeal.

JUDGMENT.

8. The conduct of the 1st Defendant has been grossly fraudulent. The attempt to try a jenm right through the medium of a contract of sale of 3 rupees worth of teakwood is the first of a series of most objectionable acts. His depositions delivered in the Lower Court is for its considerations and admissions afterwards retracted, a singular specimen of impudent fraud. He has there, however, entirely cut his case from under him, for there can be no doubt whatever that No. 1 a deed of more than 30 years old is signed by his father and that it conveyed the jenm right of the land on which this tree was situated to the 2d Defendant. He is compelled to admit the signature to No. 6 to be like that of his father. The document is a stamped one and is a withdrawal of that father from an attempt to prejudice 2d Defendant's rights, similar to that which the 1st Defendant has made in this suit. The signature of No. 1 exactly corresponds with the signature to this: the document has every appearance of genuineness, it comes from the proper custody, for both the admission of the 1st Defendant and the stubborn fact that 2d Defendant was able to prevent the carrying off of the tree shew clearly that the place of site was in his possession and acts in accordance with the terms of a document are the very best proof which it can receive. Nothing can be more worthless than the evidence of 1st Defendant: a bundle of old olais unsupported by a single act, utterly unproved, and the vague statement of a set of witnesses, admitting their own want of knowledge, are alone produced. I dismiss the appeal of 1st Defendant with costs and a fine of 10 rupees under Section XXXV, Regulation IV of 1802.

9. Appeal Suit No. 221.—No. evidence having been ad-

duced by Plaintiff to establish the loss incurred by non-delivery, a point incumbent upon him, the Moonsiff of course could not give any remedy for the breach of contract against 1st Defendant and his non-suit was fully justified. The original Plaintiff's appeal is dismissed with costs.

10. I must point out to the Moonsiff the necessity of exhibiting in his decree the manner in which documents are proved. It is not sufficient to bundle a parcel of olais into the Court; they must be established according to the laws of evidence; the decree of the Moonsiff would leave it quite uncertain whether a single one of the documents upon which he has based a correct conclusion, was evidence at all, and there is no allusion whatever to the self condemnatory deposition of 1st Defendant which is really the evidence by which 1 and 6 became evidence.

THE 16TH JANUARY 1857.

Appeal Suit No. 254 of 1855.

Appeal from the decision of Ookundan Oony Nair, District Moonsiff of Betutnaad, dated 27th June 1855.

Achicooleth Krishna Menon; Vakeel Kundan, (Deft.,) Applt.

Taramel Ramen Menon; Vakeel Kamoo Moola, (Plff.,) Respt.

1. The original suit was brought to recover rupees 63-13-9, rent of 6 parcels of land alleged to have been tenanted by Defendant and restored to Plaintiff in 1029 (1853-4).

2. Defendant answered that he tenanted for one year under a pattom chit; that subsequently the Plaintiff and he had consented to a further tenancy at ½ the original rent and that on return the whole balance was discharged.

3. The Moonsiff considered the tenancy under Plaintiff and according to the terms of the pattom chit and the balance due to Plaintiff all proved by the evidence confirmed by the refusal of oath, and observing that the document was not of the nature asserted by Defendant and that his evidence could not outweigh Plaintiff's proof, decreed as sued for.

4. In appeal the original Defendant contends;

1st. That he did not execute the document sued upon;

2d. That no money whatever is due, if there had, it would have been executed before return.

5. In appeal answer the original Defendant contends that the original decree was fully justified by the evidence.

JUDGMENT.

6. I see no ground for altering the Moonsiff's decision. The document sued upon was unquestionably executed by Defendant who has wholly failed to prove that the terms of the tenancy have been altered, for no man in his senses will believe on the testimony of the four witnesses cited that this alteration was made. The original contract was in writing and if that contract had been revoked, the revocation would have been also authenticated by writing. The plea of Defendant of course admits non-payment according to the original contract and the cancellation of that contract and acts in accordance with such cancellation being wholly unproved, I confirm the decree of the Lower Court and dismiss this appeal with costs.

THE 16TH JANUARY 1857.

Appeal Suit No. 318 of 1855.

Appeal from the decision of Kookel Kelloo Nair, District Moonsiff of Charnaad, dated 2d August 1855.

Cartadeth Parambath Cheeroo Amah; by Vakeel Ramen Menon, } (1st Deft.,) Applt.

Velimittet Sreedharen Moossath, His guardian Moongaten Poolet, Paramaswara Moossath, } { by Vakeel Venguidesawara Iyen, } (1st Plff.,) 1st Respt. (2d ditto) 2d ditto.

1. The original suit was brought to procure the return of 3 parcels of land alleged to have been passed on kanom to 1st Defendant in 1015 (1839-40) and upon which there was a balance of pattom since 1024 (1848-9).

2. 1st Defendant denied the alleged letting and asserted his right to be derived from the aunt of 3d Defendant.

3. The 2d asserted his right to the kshetram.

4. The 3d alleged a right derived from the 2d and a right in his tarwaad to manage the kshetram, but that the 2d Plaintiff was an agent.

5. The Moonsiff observed that the kanom claim derived from the 1st Plaintiff's father, by the 1st Defendant was fully proved and that all the evidence of the Defendants themselves was destructive of their own case, since it proved both that the 2d Plaintiff had for years managed and now manages it. He further remarked on the non-appearance of the kanom deed evidencing the claim alleged to be derived from another on the absurd excuse that it was pledged. Moonsiff decreed as sued for.

6. In appeal the 1st Defendant;

1st. Complains of the decision solely on the execution of the maroobad kanom deed, and urges that the question of management ought to have been discussed and proved;

2d. He makes a futile remark as to some man not having been called as a witness, because he expected him to be joined as a Defendant;

3d. The non-derivation of the right from Plaintiff was fully proved.

7. No answer was filed in appeal.

JUDGMENT.

8. Not a single ground is urged for this appeal. The Moonsiff's elaborate view of the evidence shews that the Plaintiff's case was really supported by Defendant's evidence, for the case on the record really is sufficient to establish the Plaintiff's authority. It was, however, quite unnecessary to consider this question; the fact that the 1st Defendant consented to hold under the Plaintiff plainly barred that Defendant from disputing the Plaintiff's title. I see no reason whatever for dissenting from the Moonsiff's judgment that the tenancy was so accepted by Defendant and the document sued upon executed. I confirm the decree of the Lower Court and dismiss this appeal with costs and a fine of 5 rupees under Section XXXV, Regulation IV of 1802.

THE 16TH JANUARY 1857.

Appeal Suit No. 321 of 1855.

Appeal from the decision of Mr. Stuart, District Moonsiff of Ernaad, dated 17th August 1855.

Manacadaven Mahomed Moideen Cootty, (1st Deft.,) Applt.

Kalgacovilagatha Valia Ranee ; by Vakeel Syed Latiff, } (Plaintiff,) Respt.

1. The original suit was brought to procure the return of a parcel of land which Defendant rented of Plaintiff.

2. The 1st Defendant denied the right of return until the lapse of 12 years.

3. The 2d Defendant disclaimed all right.

4. The 3d and 4th answered that they had spent rupees 150 on the property.

5. The Moonsiff decided that whether money was or was not paid to the Plaintiff was of no consequence, for that the document shewed the tenancy to be a simple right to tenant at a yearly rent. He therefore decreed the return with estimated improvements.

6. In appeal 1st Defendant contends that until the lapse of 12 years whether the contract is so worded or not, no right exists to seek return of the land.

JUDGMENT.

7. There is of course no ground whatever for this appeal. The custom of the country annexes to a grant of kanom a right in the possessor to hold for 12 years on fulfilling his covenants with the grantor. Such right, however, is not inherent in a mere letting at an annual rent. This is a tenancy from year to year only and the right of either side to terminate it is unquestionable. This appeal is dismissed with costs.

THE 17TH JANUARY 1857.

Appeal Suit No. 474 of 1855.

Appeal from the decision of Soobramana Iyen, District Moonsiff of Temulpoorum, dated 20th November 1855.

Chinna Amiar, widow of Shooppoo Shastr, } (2d Defendant,) 1st Appellant.
Rama Kristna Putter; by Vakeel Venguideshwarayen, } (3d ditto) 2d ditto.

Amaloo Amiar wife of Shamoo Putter; by Vakeel Sheshom Putter, } (Plaintiff,) Respondent.

1. The original suit was brought to recover rupees 92 with interest upon a bond alleged to have been executed by 1st Defendant in 23d Kombom 1024 (4th March 1849) to Plaintiff's brother.

2. In answer the execution was admitted but payment with the exception of rupees 5-13-10 pleaded.

3. The remaining Defendants were joined supplementally on the decease of 1st. They did not answer.

4. The Moonsiff remarked that the bond was admitted, that not only was no proof of payment adduced in the Lower Court but there was positive proof on Plaintiff's behalf that there were overtures for the settlement on the part of the deceased 1st Defendant wholly inconsistent with the statement made. Moonsiff decreed as sued for.

5. In appeal 2d and 3d Defendants,

1. Re-urge that the demand was discharged ;

2. Assign the murder of the husband 1st Defendant as a reason for not adducing proof.

6. No answer was filed in appeal.

JUDGMENT.

7. I am quite unable to listen to Appellant's application. Ten months elapsed after the death of her husband before the case was decided. In all that time not a step was taken to establish the case set up, nor are the materials of proof indicated in

appeal. The fact itself is quite incredible, for a man who discharged his obligation within 5 rupees, would have managed to discharge it outright and procure the return of the bond. The evidence in the Lower Court being amply sufficient to justify the conclusion arrived at and no ground having been urged for re-opening the case, I confirm the decree of the Lower Court with costs.

THE 19TH JANUARY 1857.

Appeal Suit No. 322 of 1855.

Appeal from the decision of Chapoo Menon, District Moonsiff of Palghaut, dated 23d August 1855.

Parasoo Rama Putter,..... (1st Deft.,) Appt.

Appa Cootty Putier; by Vakeel Sheshom Putter, } (Plff,) 1st Respt.
Latchmy Naraina Putter,..... (2d Deft.,) 2d ditto.

1. The original suit was brought to recover rupees 114-4-7 principal and interest on a document executed by 1st Defendant to 2d for value received and sold to the Plaintiff.

2. The 1st Defendant did not answer.

3. The 2d admitted the matter of the plaint.

4. The Moonsiff considered the balance due proved by the witnesses whose testimony was further aided by the 1st Defendant declining to answer a plaint of which he had taken a copy, decreed as sued for.

5. In appeal without urging any matter for reversing the decree.

Defendant alleges that sickness prevented him from answering.

JUDGMENT.

6. This excuse of sickness cannot be listened to and the execution of the bond and its transfer, permitted by the wretched practice of this country being also proved, this appeal is dismissed with costs.

THE 26TH JANUARY 1857.

Appeal Suit No. 326 of 1855.

Appeal from the decision of Oonikat Chapoo Menon, District Moonsiff of Palghaut, dated 31st August 1855.

Moondail Pisharatha Kristna Pisharody, (Plaintiff,) Appellant.

Payny son of Paynen, (Defendant,) Respondent.

1. The original suit was brought to recover rupees 30 with interest upon a bond alleged to have been executed by Defendant to Plaintiff in 1028 (1852-3).

2. Defendant uttly denied that any thing whatever had happened between himself and the Plaintiff and asserted that Plaintiff owed him money.

3. The Moonsiff observed that the statement of the witnesses on both sites is consistent, but that their evidence was liable to much suspicion, because they had not produced the document evidencing the subsidiary transactions which accompanied the alleged execution of the bond on both sides. He disbelieved both parties and dismissed the suit.

4. In appeal the original Plaintiff urges that his case was proved.

5. Defendant contends that his document was proved.

JUDGMENT.

6. The Moonsiff's first error was in allowing Defendant to prove a document alleged to have been granted to him by Plaintiff as a set off to the action. These debts if they existed would be perfectly distinct and give rise to distinct causes of action. As evidence to negative the execution of the bond sued upon, the matter was entirely irrelevant. The Plaintiff's witnesses have consistently spoken to the execution of this document by the Defendant and their case is quite unanswered. I am unable to see the slightest weight in the objection that the bond evidencing a perfectly distinct matter was not to produced to prop up their evidence. Seeing no ground whatever for discrediting the Plaintiff's evidence, I reverse the decree of the Lower Court and decree the payment by Defendant of the principal on the bond with interest from its date to that of the execution of this decree.

THE 30TH JANUARY 1857.

Appeal Suit No. 188 of 1855.

Appeal from the decision of Oonikat Chapoo Menon, District Moonsiff of Palghaut, dated 28th March 1855.

Kadankot Ittiraroo Nair, } By Vakeel } (2d Deft.) 1st Appt.
Shooppoo Nair, } Syed Latiff } (3d do.) 2d do.

Manavickrama Zamorin Rajah of Calicut; by Vakeel Sheshom Putter, } (Plff.,) Respt.

1. The original suit was brought to recover parcels of land Nos. 1 to 6 alleged to be the jenm property of Plaintiff to have been passed on a kanom of 3,500 fanams to the family of 1st to 3d Defendants in 1011 (1835). Non-payment of more than 1 year's pattom since that time was alleged.

2. The 1st to 3d Defendants pleaded that the property was the immemorial jenm of their family.

3. The other Defendants 4th, 5th, 9th and 10th mere tenants, concurred in the statement of these 3 Defendants.

4. Defendants 6th to 8th did not answer.

5. The Moonsiff deemed the witnesses to the execution of *A* spoken to by the witnesses confirmed, as he conceived it to be by *B* and *C* fully to establish the fact that the Defendants held under the Plaintiff on the title asserted by him. He remarked that judgments obtained by these Defendants against others could not affect Plaintiff's case and that the pymash account produced did not bear the name of the land. He observed that the witnesses for Defendants who asserted the land to be their jenm property spoke merely from what they had heard. He decreed in Plaintiff's favour with costs.

6. In appeal the 2d and 3d Defendants urge ;

1st. That the lands sued for is their family property ; that the Moonsiff has laid most improper stress upon *B* to which they were not parties ;

2d. That if the land had beed inspected, it would have been seen that the land in the pymash account was that here in question.

3d. They advert to a discrepancy between the document and the plaint and refer to another suit in which this Plaintiff had sued for a parcel of 20 parras as in the hands of another;

4th. Much irrelevant matter is of course introduced.

7. In answer the original Plaintiff

In substance amounts to the assertion that Defendants have not proved their jenm right and that his case is proved.

JUDGMENT.

8. The Moonsiff's ground for ejecting the Defendants admitted to have been in possession of the land sued for beyond living memory is that *A* proved by witnesses is confirmed by *B* and *C*. Now *B* is a plaint of the very Plaintiff in another suit and *C* to which no one of these Defendants was a party, contains the grounds which this Plaintiff chose to assert for withdrawing a suit against these refractory tenants who asserted 20 years ago precisely the same rights as they assert to-day. It is obvious that these documents are statements of the Plaintiff to his own advantage and not receivable evidence in his favour. It is clear therefore that the Plaintiff's case really rests upon the credibility of the evidence to the execution of *A*. The usual number of witnesses has been produced to speak to this transaction of 20 years before. There was nothing on the face of the document to guide the Plaintiff to them; they reside in various places and yet are all present with memories of the most marvellous exactitude as to the circumstances out of which the execution of the document grew, as well as to those of its actual execution. The karnaven of Defendants quite penitent that the jenm right of Plaintiff had been denied in that suit came to beg to withdraw this improper assertion and to admit that he had a right only to the improvements, and a kanom claim to the amount of those improvements was then passed to him by the document sued upon. The natural course would have been to execute a joint rauzeenamah containing the Defendants' admission of his subordinate right and the Plaintiff's consequent consent to withdraw the suit. Nothing of the kind is done; a petition is presented by Plaintiff alone to which Defendants were not parties, containing the long narrative on which this suit is based. This narrative is also inserted in the document, in itself a suspicious circumstance. The Defendants, insignificant men, would be quite satisfied with the withdrawal of the suit and would not scrutinize very nicely what had animated their powerful opponent, and curiously enough we find from the diary of the Court on this very withdrawn suit, that they were called but did not appear, although *A* was executed 3 days before the petition. These refractory tenants (Plaintiff's witnesses) are

then allowed to hold the land for a further period of 12 years paying only 1 year's pattom. Then another suit is commenced which is again struck off at the request of the Plaintiff. Finally when it is supposed that Plaintiff's assertions are sufficiently matured by age, this suit for the same subject matter is again brought forward. Not a pymash account is produced by Plaintiff in his support and we have nothing more than this document spoken to by the witnesses, upon whom after so great a lapse of time, the Plaintiff is able to put his hand. It appears to me that the whole tenor of this story exhibits conduct for its excessive mildness so unlike what Malabar has seen of the doings of the Zamorin that the testimony of the witnesses is literally nothing. That testimony is opposed by a host of improbabilities and is moreover opposed to the evidence of Defendants' witnesses who spake to what the Moonsiff is pleased to term hearsay, but really to the substantial fact undisputed that ever since they can remember, this land has been held by Defendants' family and it was always understood upon a jenm right. Further, the pymash account may not relate to this land, but it is unopposed by any thing upon the other side, and it contains Defendants' family name. Utterly disbelieving the case set up on behalf of the Plaintiff, I should of course dismiss this suit, even if I did not deem the evidence for Defendants confirmed as it is both by enjoyment in accordance therewith and by the conduct of Plaintiff explicable only by the supposition that the delay was spent in giving what is considered fresh force to proof, deserving of greater credit. Considering that Plaintiff has not shewn that Defendants have rights derivative from him and declining to eject a man whose family have immemorially possessed this land, I reverse the decree of the Lower Court and dismiss this case with costs.

ZILLAH CHITTOOR.

PRESENT : J. H. GOLDIE, ESQ., SUBORDINATE JUDGE.

THE 7TH JANUARY 1857.

Appeal Suit No. 38 of 1854.

Appeal from the decision of P. Soobba Row, late District Moonsiff of Sholinghur, under date 2d May 1853.

Paroomal 3d Defendant and guardian of the 2d Defendant in the original suit, } Appellant,

versus

A. Ragava Charloo, (Plaintiff,) Respondent.

Soobramoneyasastry, Vakeel for Appellant.

V. Varada Charry, Vakeel for Respondent.

1. The original suit was instituted by the Respondent to recover from the Appellant and other Defendants in the original suit the sum of rupees 300-0-0, being the principal and interest alleged to be due on a mortgage bond executed by the 1st Defendant to the Respondent on the 30th day of November 1845.

2. The District Moonsiff being of opinion that the bond in dispute had been duly proved by the Respondent's witnesses, as well as a previous bond to which it referred, which had been executed by the 1st Defendant's husband, adjudged the Appellant and other Defendants to pay to the Respondent the sum claimed from the proceeds of the sale of the mortgaged property, and in the event of the said proceeds not proving sufficient that the pro-

perty of the 1st and 2d Defendants should be made answerable for the debt.

3. The Appellant in his appeal petition alleged that the documents which had been produced by the Respondent were forged documents; that the 1st Defendant had no authority to execute the document No. 12, because she was entitled only to maintenance from the 2d Defendant; that the land in dispute had been placed in his possession by the Collector, because he was the guardian of the 2d Defendant, and that a reference to the proceedings held by the Collector relative to the 1st Defendant's claim to the land would shew that the claim preferred by the Respondent was a fictitious claim.

4. The Respondent in his reply alleged that the documents Nos. 11 and 12 which he had produced in support of his claim had been duly proved by his witnesses in the Lower Court, which documents had also been admitted by the 1st Defendant to be genuine, and that the Defendants in order to deprive him of his claim had caused the puttah for the mortgaged property to be made out in the name of the 2d Defendant.

JUDGMENT.

5. The Court is unable to concur in the decision of the Lower Court, as a consideration of the proceedings held before the Collector in reference to the 1st Defendant's claim to the property mentioned in the mortgage bond, as well as of the evidence taken in the Lower Court, shews that the claim preferred by the Respondent is a fictitious claim, and has been brought in collusion with the 1st Defendant. The bond stated to have been executed by the 1st Defendant's husband was executed so long back as the year 1842, and nevertheless no payment has been made on account of it, and no steps were taken to enforce the payments; this fact alone throws great suspicion as to the justice of the Respondent's claim. It is also exceedingly suspicious that the 1st Defendant should have at once admitted such a claim against her which was open to so much suspicion; it also appears from her answer to the plaint that she alleged that she had discharged a portion of it, but when called upon to prove the payments she had made, she was unable to produce any witnesses to that fact. It further appears from a copy of the order passed by the Collector in reference to the 1st Defendant's claim to the mortgaged property that the 1st Defendant stated in her petition to him that she had sold a portion of the said property to the Respondent, and it also appears that although the property mentioned in the Respondent's bond was the subject of dispute between the 1st Defendant and other Defendants for a long time before the Collector, no mention

was ever made before that officer of the Respondent's claim, but it appears that shortly after the Collector had passed an adverse decision to the 1st Defendant's claim that the present suit was instituted. As the 2d Defendant was the adopted son of the 1st Defendant's husband, the 1st Defendant was not entitled to inherit her husband's property, and therefore could not be properly held answerable for her husband's debts ; the execution therefore of the bond produced by the Respondent, which is the subject of dispute in the present suit, shews that it was executed with the view to deprive the 2d Defendant, who lives under the protection of the 3d Defendant, of the alleged mortgaged property. The Court therefore being of opinion that the claim advanced by the Respondent against the Appellant, and the other Defendants, is a fictitious claim, reverses the decision of the Lower Court, and adjudges the Respondent to pay all costs in the suit.

THE 7TH JANUARY 1857.

Appeal Suit No. 34 of 1854.

Appeal from the decision of Butcha Row, late District Moonsiff of Chittoor, under date 16th January 1854.

V. Anungara Charloo, (1st Defendant, Appellant,

versus

Streeneevasa Varada Charloo, (Plaintiff,) Respondent.

V. Varada Charry, Vakeel for Appellant.

1. The original suit was instituted by the Respondent to recover possession of $\frac{3}{64}$ths of a cawny of land in the possession of the Appellant, and his father, the 2d Defendant, and also to recover the sum of rupee 1-2-8, being the amount which had been expended by the Respondent in clearing the said land.

2. The District Moonsiff decided that the Respondent was entitled to recover possession of the land he had sued for, and to obtain payment of the sum of rupee 1-4 because the Appellant had failed to prove satisfactorily the receipt which he had produced in proof of his having purchased the land in dispute from the Respondent.

3. The Appellant in his appeal petition alleged that he had proved by his witnesses in the Lower Court that the Respondent

had resigned his right to the land in dispute by executing a document to that effect; that the objections raised by the Moonsiff to the evidence of his witnesses were not just, and that the Respondent would not have remained silent so long respecting his claim, and permitted the puttah for the land in dispute to be received by him (Appellant) if his claim had been true.

4. The Respondent in his reply alleged that the evidence given by the Appellants' witnesses was false, because there were many discrepancies in their statements, and that if he had resigned his right to the land in dispute he would have executed a document to that effect before the Revenue authorities.

JUDGMENT.

5. The Court is unable to concur in the decision of the Lower Court. The evidence taken before the Moonsiff shews that the Respondent did resign his right to the land in dispute for the consideration of the sum of rupees 2-4, which it appears that he had expended in clearing it, and that at the said time he gave the Appellant a written agreement to that effect, which was duly proved by the Appellants' witnesses in the Lower Court. It further appears that shortly before the said agreement was executed the Respondent preferred a complaint to the Tahsildar of the talook in which the land was situated against the Appellant in respect to the said land, and obtained an order from that officer confirming his right to the land, and directing it to be restored to him, and from that time until the institution of the present suit, a period of five and a half years, nothing more was heard of his claim. It also appears that a puttah was issued by the Collector in the name of the Appellant, and the 2d Defendant, without any interference or opposition on the part of the Respondent; these undoubted facts lead to the strong conclusion that the Respondent did resign his right to the land in dispute to the Appellant, as alleged by the Appellant, and therefore that the agreement produced by the Appellant is a true document. The principal objection of the Moonsiff to the agreement consisted in the discrepancies in the statements of the witnesses as to the time the agreement was executed, some asserting that it was executed early in the day, and some in the afternoon; but this difference is not sufficient to invalidate their statements, when the rest of their evidence is free from all suspicion, and is confirmed by other undoubted facts as above noticed. The Court considers also that the Respondent would not have remained so long silent respecting his claim to the land in dispute, if he had any true grounds of complaint against the Appellant. Under the above circumstances, the Court reverses the decision of the Lower Court, and directs the Respondent to pay all costs in the suit.

THE 15TH JANUARY 1857.

Appeal Suit No. 11 of 1854.

Appeal from the decision of V. Kistnamacharry, District Moonsiff of Calastry, under date 16th December 1853.

Voomada Raja Raja Damarakoomara Vencatappa Naidoo, Bahadoor, } (5th Deft.,) Applt,

versus

Mamedee Chenchoo, (Plaintiff,) Respondent.

P. Vencat Acharry, Vakeel for Appellant.

V. Varad Acharry, Vakeel for Respondent.

1. The original suit was instituted by the Respondent to recover possession of a share in the village of Mamedeegoontah in the Zemindary of Calastry under a deed of sale executed to the Respondent by one Veerapah, the grandfather of the 4th Defendant in the original suit, and also for the recovery of the sum of rupees 94-8-0 on account of the produce of the said share during nine years.

2. The District Moonsiff passed a decision in favor of the Respondent's claim as regards the share in the village of Mamedeegoontah, but disallowed his claim to the sum of rupees 94-8-0 on the ground that he had failed to prove his right to it. The Moonsiff decided in favor of the Respondent's claim to the share in the above village on the ground that it had been satisfactorily proved that Veerapah, the owner of the said share, had sold it to him before his death, which sale it was proved had been further confirmed by a receipt executed by the said Veerapah on the 2d July 1842, for the balance of the purchase money. The Moonsiff also considered that the 2d, 3d and 4th Defendants had failed to prove that the said Veerapah had bequeathed his share in the village to his daughter, Basavammah, and also that the Appellant had failed to prove that the village of Mamedegoontah was held on service tenure, and therefore was inalienable.

3. The Appellant in his appeal petition against the above decree alleged that it had been proved by his witnesses in the Lower Court that the village of Mamedeegoontah was held on service tenure, and was therefore inalienable ; that the grant No.

90 produced by the Respondent was written in the usual terms; that it contained no stipulation that the grantee might dispose of it, and therefore the owner of the share, Veerapah, had no right to sell it, and that the grant not being made to a brahmin was invalid.

4. The Respondent in his reply alleged, that his claim to a share in the village of Mamedeegoontah as well as the value of the produce which he sought to recover had been duly proved in the Lower Court; that the Appellant in order to deprive him of his just claim had forged the agreement No. 77, and had obtained his servants to give false evidence in support of it; that the said agreement was proved to be false, because the sunnud No. 96 executed five days after it, contained no allusion to it; he also maintained that if the village of Mamedeegoontah had been held on service tenure, it would have been so specified in the grant No. 90, which the Appellant had admitted was a true document.

JUDGMENT.

5. The Court concurs in the decision of the District Moonsiff. The Respondent's right to the share in the village of Mamedee goontah which was formerly owned by Veerapah, was satisfactorily proved by the evidence taken in the Lower Court, which shewed that the said Veerapah sold it to him, and executed a deed of sale of the said share on the 6th April 1839, which deed was further confirmed by a receipt for the balance of the purchase money, which it was proved that the said Veerapah had given to the Respondent on the 6th July 1842. There are no grounds for questioning the authenticity of the above documents, which are further confirmed by a deposition taken from the 1st Defendant in the late Zillah Court on the 22d December 1841, in which he admitted that the Respondent had purchased a share in the said village. The Appellant's allegation that the village of Mamedeegoontah is held on service tenure, and is therefore inalienable, is not borne out by any evidence, for the agreement which he produced in support of it is clearly a forged document. The original grant of the village made by a former Zemindar of Calastry and produced by the Respondent in proof of his claim and admitted by the Appellant to be a genuine document, contains no allusion to the village being granted on service tenure, but is a free and unreserved grant of the village, and this view of the grant is further confirmed by a sunnud issued by another Zemindar of Calastry, the genuineness of which document is also admitted by the Appellant, fixing the amount of jodee to be paid by the owners of the village, which also it is observed contains no allusion to the village being held on service tenure; the agreement therefore which is stated to have been executed a few days before the said sunnud was

issued by the owners of the village, and in which it is mentioned that the village is held on service tenure is clearly deserving of no credit under such circumstances. With the above indisputable proof that the village is not held on service tenure, the Court can give no credit to the statements to the contrary of the Appellant's witnesses, who appear from the situations they hold to be subject to his influence. The Court also concurs with the Moonsiff in considering that the Respondent's claim to the sum of rupees 94-8 on account of the produce of the share in the abovementioned village has not been established, the evidence on that point not being at all clear and decisive. Under the above circumstances, the Court confirms the decision of the Lower Court, and dismisses the appeal with costs.

THE 15TH JANUARY 1857.

Appeal Suit No. 12 of 1854.

Appeal from the decision of V. Kistnamacharry, District Moonsiff of Calastry, under date 16th December 1853.

1. M. Mamediah, (1st Defendant,)
2. Taroogooranadum, (2d ditto)
3. A. Kalemaliah, (3d ditto)

} Appellants,

versus

Mamedee Chenchoo, (Plaintiff,) Respondent.

Mahomed Jalaloodeen, Vakeel for Appellant.

1. The original suit was instituted by the Respondent to recover possession of a share in the village of Mamedeegoontah in the Zemindary of Calastry under a deed of sale executed to the Respondent by one Veerapah, the grandfather of the 4th Defendant in the original suit, and also for the recovery of the sum of rupees 94-8-0 on account of the produce of the said share during nine years.

2. The District Moonsiff passed a decision in favor of the Respondent's claim as regards the share in the village of Mamedeegoontah, but disallowed his claim to the sum of rupees 94-8-0 on the grounds set forth in Appeal Suit No. 11 of 1854, and decided that the Appellants should pay their own costs in the suit.

3. The Appellants appealed against the above decision and

in their appeal alleged that they were not in possession of the lands claimed by the Respondent; that the said lands were attached by the 5th Defendant, and therefore it was not just, as decreed by the Moonsiff, that they should pay the costs incurred by them in defending the said suit; they therefore prayed that the said costs might be collected from the Respondent.

4. The Respondent did not file any reply to the appeal petition.

JUDGMENT.

5. The Court concurs with the District Moonsiff in considering that the Appellants should pay their own costs, as they appear from the evidence taken in the Lower Court to have been in possession of the lands claimed by the Respondent at the time he instituted his suit, and to have offered every impediment to his obtaining possession of them. Under the above circumstances, the Court confirms that part of the District Moonsiff's decision, which adjudged the Appellants to pay their own costs, and dismisses the appeal with costs.

THE 15TH JANUARY 1857.

Appeal Suit No. 60 of 1854.

Appeal from the decision of Hamed Hoossain, District Moonsiff of Trivatoor, under date 31*st March* 1854.

Kanacummal, (1st Defendant,) Appellant,

versus

T. Streenevasa Vuradacharry, (Plaintiff,) Respondent.

1. The original suit was instituted by the Respondent to recover from the Appellant and the 2d and 3d Defendants th sum of rupees 40-11-0, being the principal and interest alleged to be due on a mortgage bond executed by the Appellant's husband to the Respondent on the 8th day of April 1851.

2. The District Moonsiff being of opinion that it had been satisfactorily proved by the evidence of the Respondent's witnesses that the Appellant's husband had executed the bond in dispute adjudged the Appellant to pay the sum claimed by the Respondent, together with costs of suit.

3. The Appellant in her appeal petition against the above decree denied that her husband had executed the bond which the Respondent had produced, and alleged that her husband had paid the sum of twenty-two pagodas to the Respondent's mother one account of a bond which one Appooviengar had given to her, and that he had destroyed the bond.

4. The Respondent, did not file any reply to the appeal petition.

JUDGMENT.

5. The Court concurs in the decision of the District Moonsiff. The bond in dispute was satisfactorily proved to have been executed by Appellant's husband, who is shewn to have mortgaged a portion of his property to the Respondent for the sum of nine pagodas at the same time that he sold another portion of it to the Respondent for the sum of thirteen pagodas, which portion is in the Respondent's possession. The evidence of the witnesses who deposed to the above facts was clear and consistent, and the sale of a portion of his property by the Appellant's husband, and its previous mortgage to the Respondent's mother by one Appooviengar, were not disputed by the Appellant. The Appellant alleged that her husband had discharged the amount of the mortgage bond, but the witnesses whom she cited to prove that point, declared that they had no knowledge of any such payment having been made by the Appellant's husband. The Appellant also was unable to produce the mortgage bond, executed by the said Appooviengar which would certainly have been in her possession, if her statement regarding its discharge had been true, or any receipt in proof of the said payment having been made by her husband. The Moonsiff's decision is therefore confirmed, and the appeal is dismissed with costs.

THE 17TH JANUARY 1857.

Appeal Suit No. 39 of 1854.

Appeal from the decision of Butcha Row, late District Moonsiff of Chittoor, under date 8th February 1854.

Vurdareddy, (Plaintiff,) Appellant,

versus

1. Esoomaul Saib, } (Defendants,) Respondents.
2. Pakeer Saib, }

Mooneratnamiah, Vakeel for Appellant.

Streenevasyengar, Vakeel for Respondent.

1. The original suit was instituted by the Appellant to recover from the 1st and 2d Defendants in the original suit and the Respondents the sum of rupees 63-10-6, being the alleged value of 2½ candies and 2¼ maunds of molasses which the 1st and 2d Defendants had executed a bond, dated the 20th October 1851, to supply to the Appellant. The Respondents were made parties to the suit, because they had prevented the Appellant realizing his claim against the 1st and 2d Defendants by carrying away the produce of the said Defendants' sugar plantation.

2. The District Moonsiff being of opinion that it had been satisfactorily proved that the 1st and 2d Defendants had executed the bond referred to in the plaint adjudged the 1st Defendant to pay to the Appellant the sum of rupees 29-5-7 with costs of suit, and the 2d Defendant the sum of rupees 6-1-9 with costs of suit. The Moonsiff also being of opinion that the Appellant's claim against the Respondents was a vexatious claim, directed the Appellant under Section XXXVII, Regulation VI of 1816, to pay to the Respondents the sum of five rupees as damages with costs of suit.

3. The Appellant in his appeal petition alleged that the Respondents had carried away the produce of the 1st and 2d Defendants' sugar plantation, and therefore they ought to be held responsible for his claim against the 1st and 2d Defendants. The Appellant also contended that the Moonsiff was not justified in fining him the sum of five rupees for having included the Respondents in the original suit.

4. The Respondents in their reply alleged that the bond referred to in the plaint had been executed by the 1st and 2d Defendants alone; that no property had been mortgaged to the Appellant in the said bond, and therefore that the Appellant was not justified in instituting a suit against them for the recovery of the amount of the bond.

JUDGMENT.

5. The Court concurs in the decision passed by the District Moonsiff, and considers that the Appellant has been properly adjudged to pay a sum of five rupees as damages for having preferred a vexatious claim against the Respondents. The claim made against them is clearly a vexatious claim, because they were not parties to the bond in dispute, which was executed by the 1st and 2d Defendants alone, and therefore they could not under any circumstances be held responsible for the Appellant's claim against the 1st and 2d Defendants; the said bond also shews that the property of the 1st and 2d Defendants was not mortgaged to the Appellant on account of his claim against them, and therefore the Respondents could not have committed any irregularity in carrying away the produce of the 1st and 2d Defendants' sugar plantation in consequence of the said Defendants having been indebted to them. The Moonsiff's decision is therefore confirmed, and the appeal is dismissed with costs.

THE [24TH JANUARY 1857.

Appeal Suit No. 53 of 1854.

Appeal from the decision of V. Soondra Naick, District Moonsiff of Sholungur, dated 22d March 1854.

Cawder Saib, (Plaintiff,) Appellant,

versus

1. Parea Moonien,
2. Nadoo Moonien,
3. Chinna Moonien,
4. Ponnan,
5. Govintharauz Moodelly,
6. Chettumbarier,
7. Vencatramier,
8. Soobbier,

(Defendants,) Respondents.

T. Chenchier, Vakeel for Appellant.

1. The original suit was instituted by the Appellant for the recovery of $2\frac{23}{64}$ cawnies of land, and a brick well dug thereon.

2. The District Moonsiff dismissed the Appellant's claim for want of proof, the evidence of the Appellant's witnesses being in his opinion very contradictory, and also opposed to the Appellant's statements regarding his claim, and therefore not deserving of any credit. The Moonsiff also considered that the Appellant had failed to prove that he had advanced money to the other sharers for digging the well which he claimed, because he had failed to take any document from the said persons in proof of his claim against them.

3. The Appellant in his appeal petition alleged that the well which he claimed to recover was dug at his expense, and the expense of the father of the 1st, 2d, 3d and 4th Respondents, and enjoyed by them in three shares; that the said Respondents' father sold his shares to him, and executed a deed of sale; that during his absence at Combaconum the Respondents illegally obtained possession of the said land, and that the said facts were duly proved by his witnesses in the Lower Court.

4. The Respondents did not file any reply to the appeal petition.

JUDGMENT.

5. The Court concurs in the decision of the Lower Court. The evidence by which the Appellant has supported his claim is wholly undeserving of credit, the statements of his witnesses regarding his claim being opposed to his own statements. The Appellant declared that he purchased two shares in the well claimed by him for the sum of rupees 35, and that one Vencatasa Gownden, the father of the 1st, 2d, 3d and 4th Respondents, held two shares in it, whereas the Appellant's witnesses declared that the well in dispute was dug at the expense of three other persons, besides the Appellant, and the said Vencatasa Gownden. It is also quite incredible, that the Appellant should have allowed the 1st, 2d, 3d and 4th Respondents to retain possession of the land for many years when they had no right to it, and no sufficient reason has been assigned for the Appellant having neglected to enforce his claim at an earlier date; the fact of the said Respondents having illegally possessed themselves of the land, as the Appellant alleged, was not within the knowledge of any of his witnesses, nor were they cognizant of his having been absent at Combaconum, as he alleged, when the land was sold at public auction by order of the Moonsiff, at the instance of the 5th Respondent on account of a claim which had been duly investigated by the Moonsiff and proved against the 1st, 2d, 3d and 4th Respondents. It is also to be observed that if the well in dispute was dug by the Appellant as his witnesses allege at his own expense, there was no occasion for him to take any document in proof of his right to the well from the said Vencatasa Gownden. The 1st, 2d, 3d and 4th Respondents appear from the evidence taken in the Lower Court to have enjoyed the property claimed by the Appellant for many years without any interference on the part of the Appellant, and it was only after the property had been some time sold to the 8th Respondent that he instituted a suit for its recovery in the Lower Court. The Court being thus of opinion that there is no satisfactory evidence to support the Appellant's claim, confirms the decision of the Lower Court, and dismisses the appeal with costs.

THE 28TH JANUARY 1857.

Appeal Suit No. 70 of 1854.

Appeal from the decision of Hamed Hoossain, District Moonsiff of Trivatoor, under date 31st March 1854.

Condapa Chetty, (Plaintiff,) Appellant,

versus

1. Ramasawmy Gounden, (1st Defendant,)
2. Chinna Gounden, (2d Defendant,) } Respondents.

1. The original suit was instituted by the Appellant to recover from the Respondents the sum of rupees 32, of which sum rupees 20-3-0 was alleged to be due on an account executed by the Respondents' father on the 25th March 1843, and a sum of rupees 12-8-0 was stated to be the balance due to the Appellant on account of a bullock purchased from him by the Respondents' father on the 29th July 1847; eleven annas of the Appellant's claim having been remitted by him.

2. The District Moonsiff dismissed the Appellant's claim on the ground that the Respondents had proved that they had discharged the amount of the account on which the claim for rupees 20-3 rested, and that the Appellant had failed to prove that the Respondents' father had purchased of him a bullock for the sum of rupees 16, as he had alleged in his plaint.

3. The Appellant in his appeal petition alleged that the evidence given by the Respondents' witnesses as to their having discharged his claim was false; that the payments stated by the Respondents to have been made, if they had been really made, would have been endorsed on the accounts produced by them, or they would have taken back the account which their father had signed; that the account No. 9 had been returned by him to the Respondents because they had discharged the amount, and that the said account did not refer to any other claim he had upon them; he also alleged that if further evidence was taken from him he would prove that the claim he had made against the Respondents on account of a bullock which he had sold to their father was true.

4. The Respondents did not file any reply to the appeal petition.

JUDGMENT.

5. The evidence of the Respondents' witness shews that a settlement of accounts relating to the Appellant's claims against their father was made between the Appellant and the Respondents subsequent to the date on which the account produced by the Appellant, and on which he partly rests his claim against the Respondents was executed, and that at the said time, a sum of rupees 76-6-3 was found to be due by the Respondents to the Appellant, which was stated to be the amount of all the Appellant's demands against the Respondents; it is also proved by the same evidence that the Respondents paid to the Appellant the said sum of rupees 76-6-3 and received back the account which they had executed to the Appellant. The Appellant admits the authenticity of the account which the Respondents produced, but alleges that the account now in dispute was not included in the said account, and that if it had been included, the account would have been in the possession of the Respondents. The Court however cannot concur in the Appellant's allegation which is opposed to the terms of the account which the Respondents executed and which clearly shews that up to the date on which the account was executed there was a full settlement of accounts between him and the Respondents. This view is further confirmed by the long period, extending to ten years, during which the Appellant abstained from prosecuting his claim against the Respondents. The Appellant also entirely failed to prove that he had any claim against the Respondents on account of a bullock which he had sold to their father, three witnesses having been examined with reference to that fact, who denied all knowledge of the Appellant's claim. The Court under the above circumstances, confirms the decision of the Lower Court, and dismisses the appeal with costs.

ZILLAH COMBACONUM.

PRESENT: E. W. BIRD, ESQ., ACTING SUBORDINATE JUDGE.

THE 26TH JANUARY 1857.

Appeal Suit No. 188 of 1853.

Appeal from the decision of Nagalinga Moodelliar, District Moonsiff of Paupanasum, dated 31st March 1853.

Sengamala Mooppan, Supplemental Appellant,

versus

1. Sengamala Mooppan,
2. Carooppa Mooppan, } (Defendants,) Respondents.

1. The Plaintiff sued for ¼ caray of land, valued at rupees 17-1 situated in the village of Naikampetta with the merassy registry thereof, on the ground that the said land belonged to his ancestors and was enjoyed by his father and himself, till wrongfully dispossessed thereof by the Defendants. He added that the uncle of the latter had, 30 years ago, sold the only land the family possessed, to one Ellakay Mootteya Mooppan and therefore had no right to the ¼ caray now in issue.

2. The 1st Defendant in answer averred that the registry of the land in issue now stood in the name of Mootteya Mooppan, his own father, and that the Plaintiff's allegation that the said Moottaya Mooppan was his Plaintiff's younger brother, was false; that the said land is his own ancestral property enjoyed by his father and himself from a period previous to fusly 1216 and that the Plaintiff had no right at all thereto.

3. The 2d Defendant was tried exparte.

4. The Plaintiff filed 6, the Defendant 2, documents; the former examined 6, the latter 5, witnesses. One was examined by the Court and one jointly for the parties.

5. The District Moonsiff found that the Defendant had possessed no land in the village since the sale of that to Ellakay Mootteya Mooppan abovementioned, and as the Plaintiff had mortgaged that now in issue 3 years before and had proved his right thereto, judgment went as sued for.

6. The Sub Judge on appeal by the 1st Defendant considered the enquiry very defective and remanded the suit for decree de novo on the 25th April 1849, commenting on the whole against the Plaintiff's asserted rights.

7. The District Moonsiff received further evidence and adhered to his former judgment.

8. On appeal the 2d time by the 1st Defendant, the Acting Subordinate Judge conrfimed the original or 2d decree under date 18th August 1851.

9. The Court of Sudr Udalut admitted a special appeal in No. 8 of 1852, and on the 26th January 1852, remanded the cause to the Court of original jurisdiction on the grounds that the decrees of the Lower Courts, were defective as to the settlement of the real merits of the suit.

10. They pointed out that the Plaintiff's title had been affirmed without setting forth when and how the land had passed from his hands into those of the Defendants, and the decrees of the Lower Courts did not decide a point material to the issue, namely, whether Mooteya Mooppan, the present nominal holder of the merassy, was the Plaintiff's younger brother or the 1st Defendant's father, as alleged by the parties respectively.

11. The District Moonsiff accordingly replaced the suit on his file, received additional evidence for the parties and decided;

i. That the name of the 1st Defendant's father was Mootteya Mooppan and that of the supplemental Plaintiff's younger paternal uncle Veeroomoottoo Mooppan and that therefore the merassidar was not the late Plaintiff's younger brother, but the 1st Defendants father;

ii. That the Defendants have been recognized by the Revenue authorities as the representative of the said merassidar in the revenue accounts from fusly 1248 to 1262;

iii. That the land has been long in the enjoyment of the Defendants' ancestors, and of the Defendants after them;

iv. That the deed of the sale *G* executed in February 1802 could not be held in any way to recognize the right of the Plaintiff's grandfather, to land therein sold; because he was only the brother-in-law of the vender and not in the position usually recognized as included in the word "Oolloottar," which appears at the head of the said document. The Plaintiff's suit was therefore dismissed with all costs, and the Defendants declared the owners of the land in issue.

12. The Supplemental Plaintiff son of the late Plaintiff appeals and urges;

i. That the deed of sale *G* clearly proves that his grandfather and the 1st Defendant's elder uncle Coolundy Mooppan were equal shareholders in the land therein sold;

ii. That the Defendants have not proved their acquisition of any land since the date of the above sale;

iii. That whereas the 1st Defendant admitted that his father died 45 years ago, it is very unlikely that the merass registry should have continued so many years without transfer to that of the Defendants, if they were the owners thereof;

iv. That his (Plaintiff's) uncle having died only 5 years ago, the registry is naturally still in his name, and that his said uncle's name was Mootteya Mooppan and not Veeramoottoo Mooppan as falsely alleged by the 1st Defendant and his witnesses;

v. That the mere signature of Plaintiff's grandfather Eroolappa Mooppan, at the foot of document *G* plainly shews that he was the co-parcener referred to in the heading of the said document; and

vi. That no evidence worthy of consideration has been adduced to prove that his (Plaintiff's) uncle's name was Veeramoottoo Mooppan as falsely alleged.

13. The 1st Respondent in answer contends that the decree now appealed against is perfectly correct, and the Plaintiff's grounds for appeal are one and all untenable. He prays for its rejection.

The 2d Respondent filed no answer in appeal.

JUDGMENT.

14. The Acting Sub Judge having carefully gone over all the proceedings, and evidence adduced in this case during the three trials before the Moonsiff, and the two previous appeals in

this Court, has to record his entire concurrence in the original decree now the subject of appeal.

15. There can be no doubt whatever from the strong evidence of the 1st Defendant's 1st and 5th witnesses, from that of the joint witness (the Puttamaneyum), from that of the 1st Defendant's 1st and 2d witnesses in the first retrial and from that of the Curnum (1st witness) examined for the same party in the 2d retrial; that the merassidar of the land in issue Mootteya Mooppan was the father of the 1st Defendant and not, as stated by the original Plaintiff, the latter's younger brother.

16. It is satisfactorily proved further by the statements of the 2d to the 9th witnesses for the 1st Defendant in the 2d retrial, and by his 2d, 3d and 4th witnesses in the original trial, that the original Plaintiff's younger brother's name was Veeramoottoo Mooppan, from which it also follows that the merass registry of the plaint land, did not belong to his younger brother as pleaded by Plaintiff.

17. The Court is also of opinion with the District Moonsiff that the evidence of the 1st Defendant's witnesses throughout (supported as it is by that of the joint witness and by the 4th witness for the Plaintiff) proves that the land in issue has been for a series of years in possession and enjoyment of the 1st Defendant's father, and after him, of the Defendants, although during the minority of the latter, the original Plaintiff, their relative, managed its cultivation for them, until their absolute proprietary right was recognized by the Revenue Authorities.

18. The Court concurs with the Moonsiff in the view he takes of the signature of the Plaintiff's father in the document *G*, and is clear that no proprietary right in the land alluded to in that document, can be claimed by the Plaintiff on the grounds that the said party was the co-parcener of the vender.

19. The oral and documentary evidence adduced by the Plaintiff is insufficient to rebut the strong body of testimony brought forward by the 1st Defendant in proof of his long enjoyment of the plaint land, and in proof of the entry of his father's name in the merassy registry sued for.

20. The original decree is confirmed.

21. The appeal must be dismissed with all costs.

THE 28TH JANUARY 1857.

Appeal Suit No. 198 of 1853.

Appeal from the decision of Adesyam Pillay, District Moonsiff of Munnargoody, dated 14th April 1853.

Appasamy Taven, (1st Defendant,) Appellant,

versus

Moottoo Taven, (Plaintiff,) Respondent.

1. The Plaintiff sued for a ¼ share of family property in possession of the Defendants, the suit being valued at rupees 30-7-0, on the grounds that as the representative of one of four co-sharers he had been placed in possession of a certain part of his proper portion, and the 1st Defendant, his co-parcener, was illegally withholding from him the remainder.

2. The 1st Defendant in answer admitted that the Plaintiff was a parcener and entitled to a portion of the estate, but set forth 3 objections to giving him what he claimed ; namely,

1st. That 615⅝ goolies of land claimed in the Tancecoottaly was purchased by himself for cash from the proprietors, the village merassidars ; and that therefore it was not common family property, and Plaintiff was not entitled to a share therein ;

2d. That the Plaintiff's father has already received 200 poons from his (1st Defendant's) father and that until he refunds ¼ of the said amount, he is not legally entitled to receive a share in the estate in his possession, which is available for the division ; and

3rd. That the Plaintiff and others have already made over to him in satisfaction of a part of his (1st Defendant's) share in the said poons 200 ; 484 and odd goolies of the land, with trees now sued for, and that as the transfer was confirmed by an agreement the Plaintiff could not claim a share in the said land and trees.

3. The 2d Defendant admitted the justice of Plaintiff's suit, but declared that the 1st Defendant only was liable.

4. The 3d Defendant's answer supported that of the 1st.

5. The Plaintiff examined 5, the 1st Defendant 6, witnesses. The latter filed 2 exhibits.

6. The District Moonsiff decided for Plaintiff, disallowing however the claim on the lands stated to have been purchased by the 1st Defendant, and those given over to him under the agreement aforesaid.

7. On appeal by Plaintiff, the Acting Subordinate Judge, Mr. Cadell, remanded the suit for further investigation and decree de novo under date 3d November 1850, on the grounds that the enquiry was very defective and in some respects irregular.

8. The District Moonsiff after receiving a document from Plaintiff and examining 4 additional witnesses, 2 for the defence and 2 on part of the Court, decided that the 1st Defendant's pleas were one and all groundless, his witnesses perjured, his documents Nos. 1 and 2 fabrications, and his defence litigious. He decided that Plaintiff was entitled to all he sued for and pronounced judgment accordingly with all costs.

9. The 1st Defendant appeals, arguing,

i. That the pymash account *A* on which the Lower Court decided that the 615⅝ goolies of land he purchased from the villagers, was ancestral family property, does not support that finding and is not applicable to the case;

ii. That his purchase of the said village common land from the village headman under the deed No. 1, has been proved and his enjoyment has extended over 15 years;

iii. That the Plaintiff has never claimed any part of the produce of the said land, thus proving it is not divisible;

iv. That the agreement under which the Plaintiff and 2d Defendant granted him (Appellant) the 484⅜ goolies of land in part satisfaction of his share of the 200 poons, has been proved though the document is now not forthcoming;

v. That he (Appellant) has a clear right to recover from the Plaintiff his share in the said 200 poons which Plaintiff's father received from his (Appellant's) father.

He prays on these grounds for the reversal of the original decree.

10. The Respondent (Plaintiff) submits that the original decree is perfectly correct and ought to be affirmed.

JUDGMENT.

11. The Acting Subordinate Judge having carefully gone

over the whole of the proceedings and evidence in this case, concurs with the Moonsiff in rejecting the evidence adduced by the 1st Defendant to prove the alleged transfer to him by the Plaintiff and co-parcener of 484 and odd goolies of the contested land under the agreement said to have been then executed. The agreement itself is not forthcoming and the mere oral evidence of the 1st, 2d, 3d and 4th witnesses does not satisfy the Court that the arrangement was made as alleged.

12. There is no direct evidence at all, that the 1st Defendant had a claim on the Plaintiff and 2d Defendant for the 200 poons alleged to have been previously paid them, out of the patrimony by the Plaintiff's grandfather.

13. The Acting Subordinate Judge is of opinion with the Moonsiff that the 1st Defendant's purchase of the land to which the Documents Nos. 1 and 2 relate, have not been satisfactorily established, and that there is no reason to believe that the said land was apart of the patrimony and not common village property as alleged.

14. The evidence adduced to prove the purchase itself as well as the authenticity of the bill of sale is open to all the objections which the Moonsiff has pointed out and the Court deems it, with him, unworthy of credit. It appears further that the 1st Defendant signed the pymash account *A* in the year 1830 as the merassidar of the contested land, and as then in enjoyment thereof (a fact also corroborated by the signatures of other village mahajuns) and this appears to the Court totally irreconcilable with the pleas in explanation of the said entry which appear in the 1st Defendant's present appeal, and in his answer to the appeal previously made in the same case. If merassidar and in possession of the property in 1830, he clearly could not have acquired a right by purchase to the same land from the village merassidars, its owners as now pretended, in 1839; the date of the bill of sale No. 1.

15. The Court having thus found that the original decree is correct in all particulars resolves to confirm it and to dismiss this appeal therefrom with costs.

THE 29TH JANUARY 1857.

Appeal Suit No. 239 of 1853.

Appeal from the decision of Appasawmy Pillay, District Moonsiff of Tiroottarypoondy, dated 13th August 1853.

Venkatarama Sastry, (1st Defendant,) Appellant,

versus

Samba Siniyen, (Plaintiff,) Respondent.

1. The Plaintiff sued for certain house, lands, in the village of Maharajapooram, valued at rupees 30-8-0, also for rupee 1-8-0, arrears of produce, on the grounds that he had purchased them of the 4th Defendant on the 12th May 1852, but had since been ejected by the 1st, 2d and 3d Defendants, whose right had improperly been supported by the Police Ameen; he himself (Plaintiff) being referred to a civil action for redress.

2. The 1st, 2d and 3d Defendants stated that they were themselves the owners of the house grounds under litigation, the merass being still in the name of the 1st Defendant. That the 4th Defendant had no right whatever to the said property, and his pretended sale thereof to the Plaintiff, was therefore null and void.

3. The 4th Defendant stated that he had the fullest claim to the house grounds in issue, under a deed of acquittance from his co-parcener, the father of the 1st, 2d and 3d Defendants; that he had passed the bill of sale to the Plaintiff, but that as no consideration had been made good by the latter, the sale was not confirmed, and the Plaintiff therefore had no right to bring this action.

4. The Plantiff filed 8, the 1st, 2d and 3d Defendants 4, exhibits; the parties examined 5 witnesses each.

5. The 4th Defendant subsequently to filing his answer, suffered judgment to go by default.

6. The District Moonsiff was of opinion that the evidence had fully proved the 4th Defendant's right to sell the property in issue to the Plaintiff, and the payment of consideration by the latter had also been established. The house grounds were therefore ordered to be made over to Plaintiff whose claim to arrears of produce was, for want of evidence, disallowed. The costs were also awarded to Plaintiff.

7. The 1st Defendant appeals, urging,

i. That his oral evidence has fully proved that the contested property with its merass belongs to himself, 2d and 3d Defendants, but not to the 4th Defendant;

ii. That the deed of acquittance under which the latter pretended to have a claim on the said grounds is a forgery;

iii. That the Plaintiff's 2d and 3d witnesses and those examined for the defence, are all Plaintiff's relatives;

iv. That certain documents which his (Appellant's) Vakee should have filed in the original suit were not filed.

He prays that the new evidence may now be admitted and the original decree reversed.

8. The Respondent prays for the rejection of the above adpeal and that the produce which the Moonsiff incorrectly disallowed may be awarded him.

JUDGMENT.

9. It is clearly proved in this case, and the Acting Subordinate Judge sees no reason to doubt, that the Plaintiff purchased the contested house grounds from the 4th Defendant for 28 rupees ready money, and that the deed of sale *A* was on that occasion executed by the 4th Defendant in Plaintiff's favor.

10. The evidence to prove that the 4th Defendant had the right to sell the said property, however and that the 1st, 2d and 3d Defendants had previously lost their interest therein, by their father's act, is involved in much obscurity, the evidence being on either side somewhat meagre and nearly balanced.

11. The 5th witness for the 1st, 2d and 3d Defendants who is the Curnum of the village, distinctly declares however that the 4th Defendant was the owner of the ground during the 5 years' experience and that although the merassy still stands in the 1st Defendant's name the right was vested in the 4th Defendant. It is shewn by the Plaintiff's 3d and 5th witnesses that the 4th Defendant acquired his right under a deed of acquittance (*B*) from the 1st, 2d and 3d Defendants' father, who undoubtedly was the owner and merassidar in 1838, the date of the said document.

12. The Court is of opinion that the preponderance of evidence is in favor of the 4th Defendant's ownership, and against the 1st, 2d and 3d Defendants' pleas. The Plaintiff therefore as

purchaser of the property from the 4th Defendant, was correctly declared entitled to the grounds sued for, by the original decree, which is consequently confirmed.

13. The evidence is insufficient to prove Plaintiff's right to the produce, correctly disallowed by the Moonsiff.

14. The appeal is dismissed, the parties are to pay their own appeal costs.

ZILLAH CUDDAPAH.

PRESENT : W. T. BLAIR, ESQ., ACTING SUBORDINATE JUDGE.

THE 3D JANUARY 1857.

Appeal Suit No. 78 of 1856.

Appeal from the decision of A. Auderutnasastry, Acting Disrtict Moonsiff of Cuddapah, passed on 10th December 1855.

Soobbammah, Appellant, (Plaintiff,)

versus

1. Narappah, 2d Defendant and brother to deceased 1st Defendant,
2. Soobbadoo, son to deceased 3d Defendant,
3. Yellammah, 4th Defendant,

} Respondents

1. This is an appeal from the decree of the Moonsiff who dismissed the Plaintiff's claim to rupees 116-5-0.

2. The plaint stated that on the 9th of April 1837, the 1st Defendant (deceased) when living undivided with the other 3 Defendants, his brothers and his father-in-law's widow, borrowed of the Plaintiff's husband rupees 60 repayable by 5 annual instalments of 12 rupees each, the first commencing on the 24th February 1838 ; that he paid only 4 rupees, viz. rupees 2 on the 11th of May 1840, and rupees 2 on the 4th March 1844 ; and that she therefore sued all the 4 Defendants to recover the said sum, viz.

Principal.....	60	0	0
Interest.....	60	0	0
	120	0	0

Paid with cross interest.....	7	11	3
	112	5	0
Batta to a messenger.....	4	0	0
	116	5	0

3. The 1st Defendant dying subsequent to the institution of the suit, his widow Narammah was included as supplemental Defendant, but she also died after filing an answer.

4. In this answer she pleaded ignorance of the execution of the bond ; that she did not inherit any property, and that she lived separately with her daughter.

5. The 2d, 3d and 4th Defendants also denied all knowledge of the bond and alleged that they had entered into a division of property with the 1st Defendant 20 years before the execution of the bond.

6. The Moonsiff observed that although the evidence of the Plaintiff's witnesses in some measure supported the plaint, the bond sued on was executed more than 18 years ago ; that there was nothing to shew why the Plaintiff's husband, who lived a long time after the execution of the bond, neglected to recover the sum alleged to be due thereon ; that it was not proved who endorsed the payments on the bond ; that the 1st and 2d witnesses who deposed to them, did not attest them ; that the testimony as to the inheritance of property by the 2d, 3d and 4th Defendants was discrepant ; and that it was proved in defence that the 1st Defendant had a straw house and some land which latter after being relinquished by him, was transferred to the 2d, 3d and 4th Defendants.

7. In appeal the Plaintiff urges (1) that there are no contradictions in the evidence as to inheritance ; (2) that it is not customary for part payments to be attested by witnesses ; (3) that the 2d and 3d Defendants obtained a puttah for the 1st Defendant's land ; (4) and that the 1st Defendant's debts were proved to have been liquidated by the other Defendants.

8. The answer states that the alleged payments appear to have been endorsed at the same time, and that it was not explained how the Plaintiff came to know that evidence existed to the payments said to have been made to her husband 13 or 14 years ago.

JUDGMENT.

9. The evidence as to the part payments is vague and at

variance with the plaint. The witnesses say that both payments were made in 1841 or 1842, whereas it is alleged in the plaint that they were made in 1840 and 1844. From an inspection of the bond it is also clear, as is urged in the appeal answer, that both payments have been endorsed at one and the same time.

10. The Court therefore is of opinion that the Plaintiff has failed in shewing satisfactory cause for taking the suit out of the operation of the law of limitations and confirms the decree of the Moonsiff with costs.

THE 3D JANUARY 1857.

Appeal Suit No. 80 of 1856.

Appeal from the decision of P. Vencatasawmy Naidoo, District Moonsiff of Nossum, passed on 4th September 1855.

A. Unkaloo, Appellant, (1st Defendant,)

versus

G. Condadoo, Respondent, (Plaintiff.)

1. This is an appeal from the decree of the Moonsiff adjudging the 2d Defendant to pay the Plaintiff rupees 36 with interest or in default make over to him a house and land attached for a debt due to the 1st Defendant.

2. The plaint stated that on the 5th May 1847, the 2d Defendant became indebted to the Plaintiff in the sum of rupees 36, which, by bond dated the same day, he promised to repay by annual instalments of 6 rupees, mortgaging as security his house and puttah land which were to lapse to the Plaintiff in default of payment; that the 1st Defendant attached this property for his judgment debt in Original Suit No. 347 of 1832; and that the Sub Court on his (Plaintiff's) protesting against the attachment in Miscellaneous Petition No. 527 of 1853, referred him to a regular action. The Plaintiff accordingly claimed from both Defendants the house and land valued at rupees 36 with rupees 2-12, being the expense incurred by him in the presentation of the said miscellaneous petition.

3. The 1st Defendant averred that the Plaintiff did not assert his alleged claim when the property in question was attached at his instance, and that on his preferring it by a miscellaneous

petition when the property was about to be sold, the Sub Court declared his deed to be suspicious.

4. The 2d Defendant fully admitted the claim and prayed for judgment in Plaintiff's favor.

5. The Moonsiff remarked that the 1st Defendant did not file any list of witnesses; that the Plaintiff proved his claim; and that the order of the Sub Court filed by the 1st Defendant does not throw any suspicion on the Plaintiff's claim.

6. The 1st Defendant's grounds of appeal are;

1st. That the plaint bond is collusive the Plaintiff being the 2d Defendant's adopted son and living with him;

2d. That a list of witnesses was not filed because his (1st Defendant's) Vakeel was absent at Bellary and he himself was sick; and

3d. That the Moonsiff did not look into the record held subsequent to the decree in Original Suit No. 347 of 1832, which would have proved the fraudulent character of the Plaintiff's claim.

7. The answer denies that the Plaintiff is the adopted son of the 2d Defendant.

JUDGMENT.

8. The Court considers that the view the Moonsiff has taken of this suit is erroneous. It appears from the warrant record in Original Suit No. 347 of 1832 that the 2d Defendant's house and land have been twice attached subsequently to the date of the Plaintiff's alleged mortgage bond. The Plaintiff, however, instead of advancing his claim directly the house was attached the first time, which was in July 1850, remains quiet and says nothing about it till November 1853 just when the house is going to be sold. This long delay on the part of the Plaintiff in bringing to light his lien on the house tends to throw great doubt on the genuineness of his claim, and when taken in connection with the readiness with which the 2d Defendant admits the bond and prays for judgment in his favor affords, in the opinion of the Court, sufficient grounds for arriving at the conclusion that the present suit is fraudulent and instituted with the connivance of the 2d Defendant merely for the purpose of defrauding the 1st Defendant.

9. There also appears to the Court to be another reason why the present suit should not have been decided in favor of the Plaintiff. At the date of the execution of the Plaintiff's bond the 1st Defendant already held a decree against the 2d Defendant,

and as the only property the 2d Defendant was possessed of were the house and land now in litigation, the Court cannot consider that it would be equitable, even admitting the Plaintiff's claim to be genuine, to give it a preference over that of the 1st Defendant. The 1st Defendant was certainly to all appearance very careless of his own interests, but his delay in suing out execution was owing to the prolonged absence from his village of the 2d Defendant, a fact which is admitted by the 2d Defendant himself.

10. For these reasons the Court reverses the Moonsiff's decree and directs that the house be held available to the 1st Defendant's debt. The costs of this suit will be divided between the Plaintiff and the 2d Defendant equally.

THE 9TH JANUARY 1857.

Appeal Suit No. 82 of 1856.

Appeal from the decision of C. Ramachendra Row, Acting District Moonsiff of Cumbum, passed on 24th December 1854.

A. Vencata Soobbiah, Appellant, (2d Defendant,)

versus

1. C. Soobbiah,
2. C. Lingiah,
3. M. Rungiah,
4. C. Gooroovappah,

} Respondents, (Plaintiffs.)

1. This is an appeal from the decree of the Moonsift in favor of the Plaintiffs for rupees 73-10 value of indigo leaf.

2. The Plaintiffs sued 2 Defendants representing that on the 18th of October 1852, the 2d Defendant borrowed of them rupees 120 and executed a bond in the name of his father the 1st Defendant but with his consent signed by himself, promising to supply, in liquidation of the sum, indigo leaf at the rate of 8 bundles per rupee, or in default to pay the value of the leaf at 4 bundles per rupee; that the 2d Defendant paid in leaf rupees 91-13-8 up to 20th January 1854 leaving a balance of rupees 28-2-4 which with rupees 8-10-8, the value of indigo seed received by him on the said date and entered at the foot of the same bond, amounted to rupees 36-13, for which indigo leaf had not been supplied; and that they therefore claimed rupees 76-10, viz.

73-10 the value of 294 bundles of leaf at 4 bundles per rupee, rupees 2-8 penalty on the bond, and 8 annas batta to a messenger.

3. The 1st Defendant did not defend the suit.

4. The 2d Defendant admitted the bond sued on but denying the item entered at its foot, pleaded that the balance due thereon with interest was tendered to the Plaintiffs who refused to receive it.

5. The Moonsiff held both Defendants liable to the claim less 3 rupees (penalty and batta) being of opinion that it was proved that the entry in the bond was in the 2d Defendant's own handwriting, and that the Defendants having been in possession of indigo leaf that could have been given to the Plaintiffs, sold it to others.

6. In appeal the 2d Defendant contends that the entry in the bond would, if true, have been signed by him and attested by witnesses.

7. The answer upholds the decree appealed against.

JUDGMENT.

8. The Moonsiff ought not to have allowed the item of rupees 8-10-8 on account of indigo seed, as it was neither signed nor admitted by the 2d Defendant. From an inspection of the bond it appears that the 2d Defendant distinctly promised to repay the Plaintiffs the penalty they would have to pay on the bond on account of its being on unstamp paper in case they had to sue on it, and the Court sees no objection to this stipulation being carried into effect, as the Circular Order Sudr Udalut dated 6th May 1824 only prohibits the insertion of the amount of penalty as an item in the *costs* of a suit.

9. The Court therefore modifies the decree of the Moonsiff by awarding to the Plaintiffs rupees 58-12-8, viz. rupees 56-2-8 the account of the balance due on the bond and rupees 2-8 amount of penalty paid by the Plaintiffs, with proportionate costs in both suits.

THE 15TH JANUARY 1857.

Appeal Suit No. 85 of 1856.

Appeal from the decision of A. Soobbramanyem, District Moonsiff of Madanapully, passed on 22d October 1855.

G. Mopoor Reddy, Appellant, (Defendant,)

versus

Doola Khawn, Respondent, (Plaintiff.)

1. This is an appeal from the decree of the Moonsiff ordering the Defendant to give the Plaintiff 8 pootties of grain, or its value rupees 30-10-0 with interest and costs.

2. The Plaintiff sought to recover rupees 64 representing that on the 20th of July 1852 the Defendant executed a bond for rupees 30-10-0, namely rupees 10-10-0 borrowed on that date, and rupees 20 an old debt, promising to pay the sum within one month or in default to supply 8 pootties of grain from the ensuing cartecum crop ; that the Defendant failed to fulfil either of the conditions of the bond and that the sum claimed is the value of the 8 pootties of paddy.

3. In answer the Defendant stated that he only borrowed of the Plaintiff rupees 10 but that the bond was given for a larger amount to ensure, as the Plaintiff said, its speedy payment, and that on his offering to pay the 10 rupees the Plaintiff refused to receive the money. The Defendant prayed for judgment for rupees 10 with interest.

4. The Moonsiff considered that the value of the grain had not been proved and that the Defendant failed to establish his defence.

5. In appeal the Defendant urges (1) that if his 4th witness dispensed with by the Moonsiff, and 2 of the attesting witnesses to the bond be examined, they would prove his assertion to be true (2) and that the suit should be decided on the oath of either party.

6. The answer is that the bond is in the handwriting of the Defendant ; that the Defendant apparently gained over the unexamined witnesses, and that he is not prepared to take an oath himself or abide by that of the Defendant.

JUDGMENT.

7. The bond is in the handwriting of the Defendant throughout. It appears from the record that it was the Defendant's own fault that his 4th witness was not examined, as the Moonsiff ordered his property to be attached in consequence of his non-attendance, but the Defendant refused to pay the batta for executing the order and said that there was no necessity for issuing it.

8. The price of paddy per pootty at the karteekum crop of 1852 was not proved. The Court therefore resolves to remand the suit to the Moonsiff with instructions to take further evidence on this point and pass a decree in favor of the Plaintiff for the amount that 8 pootties of paddy may be proved to have been worth at that time. The costs of this appeal (with the exception of the stamp duty on the appeal petition, which will be refunded to the Appellant by this Court on his application) will be included by the Moonsiff in his revised decree.

THE 16TH JANUARY 1857.

Appeal Suit No. 86 of 1856.

Appeal from the decision of M. Veeraswamy Naidoo, Acting District Moonsiff of Doovoor, passed on 25th August 1855.

D. Sunjeeva Reddy, Appellant, (Defendant,)

versus

S. Narappah, Respondent, (Plaintiff.)

1. This appeal is from the decree of the Moonsiff for rupees 42-13-6 against the Defendant.

2. The Plaintiff sued to recover rupees 44-13-6 as due on a bond said to have been executed by the Defendant on the 22d of December 1848, viz. principal rupees 24-15-0, interest rupees 17-14-6, and batta to a messenger rupees 2.

3. The Defendant allowed the suit to be tried exparte.

4. The Moonsiff was of opinion that the bond was proved, but that there was no proof as to the batta charge of rupees 2 which he accordingly disallowed.

5. In appeal the Defendant denying the bond and pleading an alibi maintains (1) that he did not defend the suit because he was absent at Coilcoonttah from sickness ; (2) and that the Plaintiff's 2 witnesses are one his dependent and the other his relation.

JUDGMENT.

6. The Defendant has given no satisfactory reason for his failure to defend the suit. The suit was filed on 21st December 1854, but the decree was not pronounced until 25th August 1855, and as it appears from the statement of his Vakeel that the Defendant was not absent from his village for more than 3 or 4 months, he had plenty of time after his return to put in his answer, if he had wished.

7. The decree of the Lower Court is confirmed with costs.

THE 20TH JANUARY 1857.

Appeal Suit No. 79 of 1856.

Appeal from the decision of C. Ramachendra Row, Acting District Moonsiff of Cumbum, passed on 29th September 1855.

T. Chinna Sashiah, Appellant, (Plaintiff,)

versus

1. T. Seetaramiah,
2. T. Atchemmah, mother to the 1st Respondent, } Respondents, (Defendants,)

1. This is an appeal from a decree of the Moonsiff which dismissed the Plaintiff's claim to rupees 64.

2. The plaint represented that the Plaintiff and the 1st Defendant being cousins, entered into a division of property about 12 years ago, at which time as the latter was a minor, the 2d Defendant executed a kararnamah *A* (14) under date the 6th June 1843 to the effect that the outstanding debts and the cattle should be divided equally, and that the Defendants did not pay their portion of the debts in Suits Nos. 84 and 296 of 1849 and 513 of 1851 filed and decided against him (Plaintiff) and of another of rupees 8-8 due to one G. Appa Soobbiah, in all amounting to rupees 128, a moiety thereof being the sum claimed.

3. The 1st Defendant answered for himself and the 2d Defendant that in 1837 when he was under age, the Plaintiff and 2d Defendant had a dispute in dividing their property which was settled by arbitrators, who decided that the estate and debts should be equally divided by them; and that in the division of property, the Plaintiff took in excess of his share ornaments valued at pagodas 43, half of which is therefore due to him after deducting a debt due to one G. Yelliah.

4. The Moonsiff observed that the Plaintiff's 1st and both parties 1st and 2d witnesses were unable to particularize the terms of the document *A*; that the evidence of both parties witnesses, which went to shew that the joint debts in dispute were incurred by the parties, and ought to be discharged by them, was at variance with the terms of *A* which in contra-distinction to joint debts, had reference to debts contracted by the parties ancestors; that the Plaintiff adduced no proof to shew that the debts in question were incurred for the benefit of the family; that as the 1st Defendant's father, the eldest member of the family, died a few days prior to the partition, the bonds for the debts in question, if true, would have been drawn up in his name; and that the Defendant's witnesses 1, 2, 3, 4 and 6, deposed that the dispute between the parties as to ancestral debts was still unsettled.

5. In appeal the Plaintiff contends; (1) that the kararnamah in question was proved; (2) that it was also proved that he paid the joint debts; (3) that the bonds sued on in the suits referred to in the plaint, were executed by him when living undivided with the 1st Defendant after the death of his (1st Defendant's) father; (4) and that the Defendants' witnesses are their relatives, debtors, and dependants.

6. The Appellant filed one document in appeal, being an extract from the jummabundy accounts for fusly 1245.

JUDGMENT.

7. As the answer is silent regarding the kararnamah *A*, the Defendants must be held to have admitted it. This document is to the effect that the outstanding debts at the time of its execution (6th June 1843) should be paid jointly by the Plaintiff and the Defendants. It is only necessary therefore to ascertain whether the bonds in the three suits mentioned in the plaint were executed before or after the kararnamah, and the Court finds on referring to the said suits that those in the two former bear the date of 1837 and that in the latter of 1839. They are all in the name of the Plaintiff alone, which is quite correct, as from the Exhibit No. 13 filed by the Plaintiff in appeal it appears that the 1st Defendant's father died in 1835 and not, as stated by the Moonsiff

in his decree, only a few days before the division of property took place. The Court therefore being of opinion that the Defendants are bound to pay half of the debts in Suits Nos. 84 and 269 of 1849 and 513 of 1851, but not of that for rupees 8-8 alleged by the Plaintiff to be due to Appa Soobbiah, as it has not been proved, reverses the decision of the Moonsiff and passes a decree in favor of the Plaintiff for rupees 54-5-9 being half the amount decreed against him in the three said suits, with costs.

THE 21ST JANUARY 1857.

Appeal Suit No. 61 of 1856.

Appeal from the decision of C. Anuntacharry, District Moonsiff of Tungatoor, passed on 3d January 1856.

S. Soobbamah, Appellant, (Plaintiff,)

versus

S. Bhamaramba, Respondent, (Defendant.)

1. This is an appeal against the revised decree of the Moonsiff who dismissed the Plaintiff's claim to maintenance amounting to rupees 64.

2. The Plaintiff stated that her husband and the father-in-law of the Defendant were undivided brothers; that they and the Defendant's husband died, first the Plaintiff's husband, then the Defendant's husband and lastly his father; that the Defendant succeeding to the whole family property, executed an agreement in favor of Plaintiff promising her a share of the same, but that she did not give it; and that she (Plaintiff) therefore claimed maintenance, viz. rupees 30 for the past year, rupees 30 for the current year and rupees 4 for 2 cloths.

3. The Defendant answered that prior to his death her father-in-law divided the personal property between herself and the Plaintiff.

4. The Moonsiff by his primary decree awarded to the Plaintiff the maintenance sued for.

5. On the application of the Defendant the suit was remanded.

6. The grounds given in the revised decree for dismissing the suit are that the evidence of the Defendant's witnesses at the

re-trial proved that the Defendant's father-in-law divided the jewels, brass utensils and house between the parties, and told them to take the Bhatavurty enam in equal shares.

7. In appeal the Plaintiff urges (1) that the statements of the Defendant's witnesses examined at the re-trial were to the same effect as those of the witnesses first examined; (2) and that the Moonsiff remarked in his first decree that the testimony first adduced was opposed to the Hindoo law, but admits in his second decree evidence of the same nature.

8. The appeal answer contends that the agreement filed by the Plaintiff herself proves the division of property, and that her (Defendant's) witnesses proved that the Plaintiff let the house which fell to her (Plaintiff's) share, and that she was in enjoyment of the land at Commoor equally with the Defendant.

9. On the 20th December 1856 the Court passed the following decision;

"A reference was made to the law officers of the Sudr "Udalut with a view to ascertain whether the Plaintiff or the De- "fendant was entitled to succeed to the property of the deceased "Naraina Bhotloo. From their answer it appears that according "to the Hindoo law the Defendant is the rightful heiress; that "the Plaintiff is entitled to maintenance from her and that the "division of property made by the Plaintiff and Defendant is "invalid.

"Under this exposition of the law the Court reverses the "decision of the Lower Court, and decrees to the Plaintiff the "sum of rupees 64 claimed as maintenance for 2 years with all "costs."

10. The Defendant having in Miscellaneous Petition No. 189 of 1856, prayed for a review of judgment on the grounds that she was not possessed of sufficient property to enable her to pay the amount of maintenance awarded and that she had no opportunity of raising this point in her appeal answer, the Court considering that there were good reasons for granting her prayer, applied for the sanction of the Court of Sudr Udalut for a review of judgment, which having been accorded by that Court in their proceedings of the 16th instant, the Acting Subordinate Judge having revised the case accordingly, proceeds to pass a fresh decision thereon.

JUDGMENT.

11. After a careful consideration of the evidence in this suit,

the Court being satisfied that the Defendant is not possessed of sufficient property to enable her to pay so large a maintenance as that claimed by the Plaintiff, and being of opinion that, with reference to the circumstances in life of both parties, rupees 12 a year would be a reasonable amount of maintenance, resolves to adjudge to the Plaintiff rupees 24 for food and cloths, in lieu of the rupees 64 originally decreed, with proportionate costs.

THE 22D JANUARY 1857.

Appeal Suit No. 88 of 1856.

Appeal from the decision of C. Ramachendra Row, Acting District Moonsiff of Cumbum, passed on 31st December 1855.

Muddala Nursoo, Appellant, (1st Defendant,)

versus

Nundiah, Respondent, (Plaintiff.)

1. This is an appeal from the decree of the Moonsiff directing the 1st Defendant to pay the Plaintiff rupees 89-6-0 or 4p. 9t. 7m. of paddy and exonerating the 2d and 3d Defendants from the claim.

2. The plaint stated that the Plaintiff's father Venkiah used to make use of the grain pit on the premises of the Defendants (3 in number) upon payment of a rent of one toom per annum ; that he (Venkiah) accordingly on the 24th of March 1854 deposited in the granary 4p. 9t. 7m. of paddy ; that upon his death the Defendants misappropriated 1p. 6t. 7m. thereof, and that the Plaintiff having complained to the Head of Police and the Joint Magistrate was referred to a civil action. The Plaintiff claimed rupees 89-6-0 as the value of the said paddy at rupees 20 per pootty.

3. The 1st Defendant's answer was that his daughter having been kept by the Plaintiff's father, he stored 4 pootties of grain in the grain pit for the use of himself and his daughter and that he (Plaintiff's father) himself gave them for their subsistence 18 tooms out of the said paddy, which for want of a convenient place they secured in the same granary.

4. The 2d and 3d Defendants exparte.

5. The grounds of the Moonsiff's finding for the Plaintiff were that the claim was proved partly by the 1st Defendant's admission and partly by the evidence adduced by the Plaintiff; that the testimony of the Defendant's witnesses as to the paddy having been deposited for their use, was discrepant and incredible; and that the unsworn to statements of the 2d and 3d Defendants before the Head of Police in support of the same testimony could be received as evidence.

6. In appeal the 1st Defendant argues (1) that it was proved that his daughter was kept by the Plaintiff's father and that he had permitted them to take the paddy in dispute for their maintenance; (2) that the Plaintiff's witnesses are his debtors, relations and servants; (3) and that there was no document to shew that any rent was agreed on for the granary.

JUDGMENT.

7. The 1st Defendant admits that the Plaintiff's father deposited 4 pootties of grain in his grain pit, but says that he put them there for the use of himself (1st Defendant) and his daughter. From his own answer, however, it is evident that this could not have been the case, as he alleges that on one occasion the Plaintiff's father gave him 18 tooms of the grain, thus tacitly admitting that the whole of it belonged to the Plaintiff's father, whereas had it been given to him and his daughter, they would have been at liberty to take it whenever they liked without reference to the Plaintiff's father. It seems, therefore, as stated by the Plaintiff's witnesses, that the grain was merely deposited for the sake of security in the Defendant's granary, and that the Defendants had no right to it whatever.

8. There is no satisfactory evidence to shew that the quantity in the grain pit was more than 4 pootties. This is what is admitted by the 1st Defendant and although the Plaintiff's witnesses state it at 4 pootties 9 tooms and 7 moontahs, there is no documentary evidence on the point, and it is impossible that the witnesses should be able to depose to the exact quantity so accurately as they pretend to do. The Court therefore resolves to reject the extra 9 tooms and 7 moontahs as not proved, and accordingly modifies the decree of the Moonsiff by directing the 1st Defendant to pay to the Plaintiff 4 pootties of paddy, or their value, rupees 80, with proportionate costs in both suits.

THE 22D JANUARY 1857.

Appeal Suit No. 89 of 1856.

Appeal from the decision of Mahomed Jaffir, District Moonsiff of Royachoty, passed on 11th February 1856.

B. Morrah Reddy, Appellant, (Defendant,)

versus

M. Venkatramanah, Respondent, (Plaintiff.)

1. This is an appeal praying for the reversal of the decree of the Moonsiff, who out of rupees 64 claimed, decreed to the Plaintiff rupees 49-7 with costs.

2. The plaint sets forth that on the 16th June 1848 the Defendant owed the Plaintiff pootties 2, tooms 18 and moontahs 11 of ragy and rupees 5-11 in money, which, by a bond executed on the above date, he promised to pay during the Carteekum crop of the same year without interest, or in default of doing so, with interest both on the grain and the money; and that the grain with interest amounted to 5p. 7t. 2m. valued at rupees 58-9 and the money to rupees 9-7, in all rupees, 68 of which the Plaintiff struck off rupees 4, and claimed the balance.

3. The Defendant denied the bond and pleaded an alibi.

4. In addition to the bond *A*, the Plaintiff filed a note *B* (23) written to him by his 1st witness and in which he writes to the following effect;—"I have come to Madiravala, and as you did not speak to me, I have sided with Mora Reddy (the Defendant), notwithstanding this, if you come here directly, I will endeavour to make your business come right and will give evidence in your favor."

5. The Moonsiff considered the bond to be genuine for the following reasons;

1st. That the demand was proved;

2dly. That the 1st witness who deposed that he did not know the Defendant, admitted that he wrote the note *B*;

3dly. That the Plaintiff's 2d witness deposed to the execution of the bond;

4thly. That the Defendant neither filed his alibi bond nor gave in interrogatories for his witnesses, resident in Cuddapah.

6. The objections urged in appeal by the Defendant are ;

1st. That his Vakeel to whom he gave his document having died, the document was not produced nor interrogatories given in, but that the Moonsiff ought to have given him notice of the death of the Vakeel ;

2dly. That the Plaintiff's witnesses gave evidence against him because they did not got the bribe promised them at the time of the execution of the alleged bond *A* ; and

3dly. That the Moonsiff after stating it as his opinion that the Plaintiff's 1st witness had perjured himself, decided in favor of a document written by him.

JUDGMENT.

7. The Court cannot concur with the Moonsiff in his opinion as to the genuineness of the bond. The evidence of the Plaintiff's 1st witness is worthless, as from the note *B* which he admits that he wrote, it is clear that he was prepared to give evidence for whichever side paid him best. The 3d witness, whose name is entered as one of the witnesses to the bond, denies having attested it. The 2d witness admits that he witnessed the bond, but says that besides himself it was only attested by one other person and that was the 3d witness, who denies all knowledge of the matter, whereas in the bond the names of four persons are entered as attesting witnesses. This witness also states that the whole amount of the grain and money for which this bond was given was only rupees 4 or rupees 5 and odd. These three were the only witnesses to the bond, the other two being only called to prove the demand on the Defendant.

8. The Court considers the evidence for the Plaintiff utterly undeserving of credit, and accordingly reverses the decree of the Moonsiff and dismisses the suit with all costs.

THE 22D JANUARY 1857.

Appeal Suit No. 90 of 1856.

Appeal from the decision of V. Sasha Charloo, Acting District Moonsiff of Cadry, passed on 8th March 1856.

B. Singannah, Appellant, (2d Defendant,)

versus

P. Jejannah, Respondent, (Plaintiff.)

1. This is an appeal from the decree of the Moonsiff ordering both Defendants to supply 3p. 5t. 10m. of castor oil seeds or pay the Plaintiff rupees 64.

2. The Plaintiff sued 2 Defendants representing that on the 9th of August 1852 the 1st Defendant borrowed of him rupees 32-12-0 and executed a bond promising to repay the sum within 2 months or in default to supply the value in castor oil seeds at 10 rupees per pootty ; that he failed to fulfil the conditions of the bond, and that the 2d Defendant is illatum son-in-law to the 1st and co-sharer in his property. The Plaintiff claimed

	RS.	A.	P.
The value of 3p. 5t. 10m. of oil seeds for rupees 32-12-0 at 20 rupees per pootty,	65	8	0
Foregone	1	8	0
	64	0	0

3. The 1st Defendant admitted the claim but prayed that it might be decreed to be paid by him and the 2d Defendant jointly as the debt was incurred when they were undivided and the 2d Defendant subsequently divided property and separated from him.

4. The 2d Defendant by refusing to sign the notice, allowed the suit to be tried exparte.

5. The Moonsiff was of opinion that the claim was proved both by the 1st Defendant's admission and the evidence adduced by the Plaintiff.

6. In appeal the 2d Defendant urges ;

1st. That while remarking that he refused to sign the notice, the Moonsiff does not state that he was satisfied by proof of such refusal or that he had given the usual proclamation ;

2d. That the Moonsiff did not ascertain who became responsible for the debt in question contracted when both Defendants were undivided ; and

3d. That when the Defendants entered into a partition of property, fareekut deeds dated 27th January 1854 were exchanged by them by which he (2d Defendant) is absolved from debts.

JUDGMENT.

7. The Court considers that the Moonsiff was wrong in holding the 2d Defendant liable to the Plaintiff's claim, as he was not a party to the bond and there was no evidence adduced to shew that he had rendered himself responsible for the debt. The Court therefore resolves to modify the decree of the Lower Court by exonerating the 2d Defendant from the claim and directing the Plaintiff to pay his costs in appeal.

ZILLAH MADURA.

PRESENT: H. E. SULLIVAN, ESQ., ACTING SUBORDINATE JUDGE.

THE 3D JANUARY 1857.

Appeal Suit No. 139 of 1855.

Appeal from the decision of Soobbanarasiah, District Moonsiff of Dindigul, dated 24th September 1855.

Moottien Chetty, Appellant, (Defendant,)

versus

Sadia Pillay, Respondent, (Plaintiff.)

1. The original suit was brought by Plaintiff for recovery of rupees 45-7, being loss of produce.

2. The plaint stated that a tank called "Mamagarencolom" is in the enjoyment of the Plaintiff on mortgage. On the 2d January 1854, the Defendant having, without authority, made use of the water of the said tank for his lands, the Plaintiff was obliged to lay waste his own land measuring $7\frac{15}{16}$ coolies, and complained of it to the Head of Police of Taudicomboo talook, who fined the Defendant in the sum of rupee one, and directed Plaintiff to have recourse to a civil action for any damage he might have sustained, in consequence of the acts of the Defendant.

3. The Defendant denied his liability to Plaintiff's claim, and ascribed it to enmity; and further averred that the tank in question being the property of his uncle, he was in the habit of irrigating his lands therefrom. In accordance to this practice, and with the permission of the Plaintiff (the mortgagee) the Defendant irrigated his land from the tank on the date in question. The

Plaintiff left his land waste because it was swampy and unfit for cultivation.

4. The Moonsiff was of opinion that the Plaintiff had proved the Defendant's unauthorized irrigation of his land from the tank in question, but awarded to him only rupees 24, as adequate loss of produce, out of the sum sued for, and non-suited him in the residue of his claim, on account of the unsatisfactory nature of the evidence of the witnesses, who deposed to the loss sustained by him.

5. Against this decree the Defendant appeals on the following grounds;

1st. That his assertion in the original answer that he watered his land from the tank in question according to former usage, and with the Plaintiff's permission, and that the suit had its origin in enmity, had been proved by his witnesses;

2d. That the Moonsiff's decree awarding to Plaintiff a certain sum as loss of produce is unjust, inasmuch as the Moonsiff admits that the evidence of the witnesses, as regards the amount of loss, is not satisfactory;

6. The Respondent, who was declared exparte on the 2d January 1856, presented an answer on the 4th, but it was not filed owing to his absence to explain his default.

JUDGMENT.

7. The Court is of opinion that if the Defendant, Appellant, had irrigated his lands from Plaintiff's, Respondent's, tank with the permission of the latter, there would have been no grounds for the original suit. The Appellant, moreover, asserts in his original answer, that the tank is the property of his uncle. Perhaps it is, but it is fully shewn that the Respondent has a right to the water of the same, for the unauthorized appropriation of which, the Appellant was punished by the revenue authorities.

8. The Court quite concurs with the Moonsiff as to the amount to be awarded to Plaintiff, Respondent, for damage sustained, and confirms without modification the original decree.

THE 3D JANUARY 1857.

Appeal Suit No. 151 of 1855.

Appeal from the decision of Soobba Narasiah, District Moonsiff of Dindigul, dated 24th September 1855

Sadia Pillay, Appellant, (Plaintiff,)

versus

Moottien Chetty, Respondent, (Defendant.)

1. The original suit was brought by Plaintiff for recovery of rupees 45-7-0, being loss of produce.

2. The plaint stated that a tank called " Maniagarencolom" is in the enjoyment of the Plaintiff on mortgage ; on the 2d January 1854, the Defendant having, without authority, made use of the water of the said tank for his lands, the Plaintiff was obliged to lay waste his own land measuring 7$\frac{15}{16}$ coolies, and complained of it to the Head of Police of Tandicomboo talook, who fined the Defendant in the sum of rupee one, and directed Plaintiff to have recourse to a Civil action for any damage he might have sustained in consequence of the acts of the Defendant.

3. The Defendant denied his liability to Plaintiff's claim, and ascribed it to enmity, and further stated that the tank in question being the property of his uncle, he was in the habit of irrigating his lands therefrom. In accordance to this practice, and with the permission of the Plaintiff (the mortgagee) the Defendant irrigated his land from the tank on the date in question. The Plaintiff left his land waste because it was swampy and unfit for cultivation.

4. The Moonsiff was of opinion that the Plaintiff proved the Defendant's unauthorized irrigation of his land from the tank in question, but awarded to him only rupees 24 as adequate loss of produce, out of the sum sued for, and non-suited him in the residue of his claim on account of the unsatisfactory nature of the evidence of the witnesses, who deposed to the loss sustained by him.

5. The Plaintiff appeals against that part of the Moonsiff's decree which non-suited him in his claim to a certain sum of loss of produce, and urges that he has fully proved by his witnesses that he had sustained loss to the extent claimed.

6. The Respondent, Defendant, refutes the statements made in the above appeal, and prays for the confirmation of that pait of the Moonsiff's decree appealed against by Plaintiff.

JUDGMENT.

7. The portion of the original decree appealed against in this suit was confirmed by the decree passed by the Court in Appeal Suit No. 139 of 1855.

8. The Court sees no reason to take any other view of the case than the one it arrived at when passing judgment in the aforesaid appeal suit.

9. The original decree is hereby confirmed.

THE 8TH JANUARY 1857.

Appeal Suit No. 138 of 1855.

Appeal from the decision of Soobbanarasier, District Moonsiff of Dindigul, dated 13th September 1855.

1. Sawmy Chetty; and
2. Vencatachellum Chetty, } Appellants, (heirs of the 14th Defendant,)

versus

Saminauden Chetty, Respondent, (Plaintiff.

1. This suit was brought for the recovery of $16\frac{1}{16}$ goolies of malgoozary poonjah land annually yielding rupees 48-10-2; and also to recover one half of a stone well valued at rupees 16-0 0.

2. The plaint sets forth that there were 3 brothers, viz.

1st. Chennan Chetty the grandfather of the 1st Plaintiff and of the 3d, 5th, 6th and 7th Defendants and great grandfather of the 1st, 2d and 4th Defendants;

2d. Cooppamoottoo Chetty the grandfather of the 8th, 10th and 11th and great grandfather of the 9th Defendant; and

3d. Sawmy Chetty the father of the 12th, 14th and 16th Defendants, grandfather of the 13th and father-in-law of the 15th about 60 years ago, the said brothers reclaimed 2 pieces of land (Nos. 429 and 430, one half of which is now in litigation)

and also constructed a stone well thereon, and enjoyed the same under puttahs made out in the name of the 2d brother Cooppamoottoo Chetty. In fusly 1228 the 1st and 2d brothers died, their descendants and the surviving 3d brother divided the family property with the exception of the land in question, which they continued to cultivate jointly, enjoying the produce according to their respective shares, under puttahs made out in the name of the 3d brother. After his death it was decided by mediators in fusly 1246 that the Plaintiffs and others should enjoy the produce of the land for 4 years and the Defendants 8 to 16 for the same number of years in rotation. These Defendants accordingly enjoyed their turn till fusly 1249, and the Plaintiff in his turn cultivated the land for fusly 1250, but the produce thereof was forcibly appropriated by the 14th Defendant. The Plaintiff was, on a complaint being made to the Hoozoor regarding it, directed to have recourse to the Civil Court. In 1842, the Plaintiff and the Defendants 1 to 7 were prepared to bring a suit, when a compromise was made by the other Defendants to the effect that they would give up to Plaintiff and others a moiety of the disputed land. On the 7th June 1842 the Defendants 1 to 7 sold their $\frac{3}{8}$th share of the land in question to Plaintiff for rupees 24 under a deed. Thus the Plaintiff became entitled to an equal share of the land which the Defendants 8 to 16 refuse to restore, and for the recovery of which the Plaintiff files this action against all the Defendants.

3. In their answer the Defendants 3d, 4th, 6th, 7th, 8th, 10th and 11th admit the Plaintiff's claim.

4. The answer of the Defendants 12 to 16 which was supported by that of the 1st and 5th, denied the plaint and averred, that about 70 or 80 years ago, the 1st brother, whose descendants are the Plaintiff and Defendants 1 to 7, having separated himself out of the family, the 2d and 3d brothers lived together and acquired the land in question, which on a division being made among them, fell to the share of the 3d brother, whose descendants the Defendants 12 to 16 continue to enjoy the same under puttahs in their favor.

5. The 2d and 9th Defendants exparte.

6. The Moonsiff discredited the evidence of the witnesses on the part of the defence and gave judgment in favor of the Plaintiff, being of opinion that his enjoyment of the land in question, as set forth in the plaint till fusly 1244, was satisfactorily proved by the evidence of his witnesses, especially by the village Curnum. The Moonsiff further observed in his decree that it would, in no way, affect any claim of the Plaintiff's co-parceners to the land, because the evidence brought by Plaintiff to prove the transfer to him of their shares of it by sale, is insufficient.

7. Against this judgment the heirs of the 14th Defendant appeal on the following grounds;

1st. The acquisition of the land in question long after the Respondent's grandfather separated himself on a division, and the long enjoyment of the same solely by the Defendants have been proved by witnesses;

2d. The Moonsiff's decree awarding to the Plaintiff the whole of the disputed land is irregular, inasmuch as this officer admits that the evidence brought by Plaintiff to prove his plea of purchase from his co-parceners of their shares of the disputed land is insufficient.

8. The Respondent refutes in the answer the statements made in the appeal, and prays for the confirmation of the original decree.

JUDGMENT.

9. The Moonsiff bases his decree mainly on the evidence of the village Curnum, the 6th witness of Plaintiff, Respondent, who deposes to the land having been in possession of Plaintiff, Respondent, till 1834 or 1835, but the same witness proves also that from the abovementioned time up to the date when this suit was instituted the 14th Defendant has been in possession of the land in dispute. Had the Plaintiff any just claim, it is hardly credible that he would have allowed 20 years to pass by, without putting it forward.

10. The Moonsiff's decree is reversed. Costs original and appeal to be borne by the Respondent.

THE 17TH JANUARY 1857.

Appeal Suit No. 145 of 1855.

Appeal from the decision of Streenevassa Row, District Moonsiff of Shevagungah, dated 22d December 1854.

1. Soobramama Pillay, and
2. Iyatoory Iyengar *alias* Cheetarama Iyengar, } Appellants, (Plaintiffs,)

versus

1. Soondarakaveroyen,
2. Alagoopillay, heir of the deceased 2d Defendant,
3. Ramy kaveroyen,
4. Sungaralingum Pillay, and
5. Curpana kaveroyen, } Respondents, (Defendants.)

1. This suit was brought to obtain an injunction prohibiting the Defendants' interference with the Plaintiffs' enjoyment of 210 coorkums of malgoozary poonjah land annually yielding rupees 61-4-0.

2. The plaint sets forth, that the land in litigation appertains to the village of Keloovetchee (boundaries given) belonging to the Plaintiffs and other shareholders, who from the time of their ancestors continue to cultivate and enjoy the same up to the present period. In January 1840 the 1st and 2d Defendants and the father of the 3d preferred a complaint to Mr. Blackburne, the then Collector, to the effect that the land in question belonged to their village of Ponnungal, and that the Plaintiffs took forcible possession of the same; that the talook Ameen enquired into it through to the Collector, who believing it, and considering that the stone called "Moonienasawmy Nelacul" as the mark of the southern boundary of the Plaintiffs' village of Kelloovetchee (whereas in fact it is not) passed an order under date the 16th November 1840 directing the Defendants to enjoy the lands lying south of the said stone, and the Plaintiffs those on the north and referring the party dissatisfied to a civil action. Taking advantage of the above order, the Defendants filed a suit against the Plaintiffs and others 21 in No. in No. 360 of 1849 before the late Hindoo Sudr Ameen for possession of 172 coorkums and of those in dispute. The Plaintiffs and others being then unable to make a joint defence to that suit were declared exparte. The Sudr Ameen gave a decree therein in favor of the Defendants in this

No. giving at the same time an indulgence to the Plaintiffs to bring a regular suit against them according to the Collector's order within 6 months. There are many other shareholders in the village besides the Plaintiffs, who have however brought this suit for all.

3. In their answer the 1st, 2d and 3d Defendants deny the plaint in toto, and state that the land in question belongs to their village of Ponnangal. The Defendants and their ancestors held and enjoyed it, and it was subsequently laid waste owing to its not yielding good crops. In 1839, the Plaintiffs and others having attempted to cultivate the same, the Defendants complained of it to the Collector, who passed the order above referred to, by which the Defendants were declared entitled to the lands &c. in question; as the Plaintiffs again took forcible possession of the disputed land the Suit No. 360 was filed against them. The Defendants further deny the correctness of the limit of the southern boundary of the Plaintiffs' village specified in the plaint.

4. The Moonsiff dismissed Plaintiffs' claim with costs, being of opinion, that the evidence of their witnesses was not admissable, inasmuch as they (witnesses) seem to be interested in the suit, and that the documentary evidence adduced by them, did not at all prove that the land in question belonged to their village of Keloovetchee, and that it had been enjoyed by them. He further observed that the correctness of the limit of the southern boundary of the Plaintiff's village also was not proved.

5. Against this decree the Plaintiffs appeal;

1st. Because, that the land in question is attached to their village and has been enjoyed by them; has been proved by their witnesses, who are merassidars of the village, and by the documents *D* and *E* filed by them, also that there is a total absence of any proof on the part of the Defendants to the contrary;

2dly. Because the document *F* filed in the original and those *G*, *H* and *I* presented by Plaintiffs with their application to the Moonsiff for review of the original decree, clearly shew the correctness of the limit of the southern boundary of their village.

6. The Respondents maintain the justice of the original decree, and pray for its confirmation.

JUDGMENT.

7. The Court is of opinion that the Moonsiff's decree, nonsuiting the Plaintiffs, cannot be uphold in appeal.

8. The land in litigation lies between the two villages of (1) Ponnangal on the south and (2) Keeloovatchee on the north.

9. The Defendants, Respondents, file no documents in support of their case. The Plaintiffs, Appellants, file nine, of which those marked *F* and *H* are most important, as determining the ancient boundaries of the two villages between which the disputed land is situated.

10. Exhibit *F* is an authenticated copy of an extract from the accounts of the Shevagunga Zemindary forwarded to the Collector's cutcherry by the late Zemindar in 1834, and refers to the boundaries of the village of Ponnangal, which lies to the south of the disputed land.

11. In this document it is stated that the northern boundary of Ponnangal is shewn by Pottapalay and Cullangoottoo.

12. Pottapalay (No. 1) is the stamp of an old pala tree measuring about 1 yard in diameter, and Cullangoottoo (No. 2) is composed of six ancient mounds about 5 or 6 feet high at present covered over with trees and vegetation.

13. The northern boundary therefore of the village of Ponnangal is very clearly defined in this document *F*.

14. Now the land in dispute lies to the north of this boundary and here exhibit *H*, which is of the same nature as exhibit *F*, differing only inasmuch as it refers to the boundaries of the village of Keelavatchee, distinctly shews that the land in dispute belongs to that village, for it states, that the southern boundary of Keelavatchee is the northern boundary of Ponnangal, which by exhibit *F* is shewn to be Pottapalay and Cullangoottoo to the northward of which the land litigated for lies.

15. In addition to this, the Plaintiffs, Appellants, prove by documentary evidence enjoyment of part of the land for two fuslies. The Defendants, Respondents, admit that they have never been in enjoyment of it.

16. The original decree is reversed and the land sued for, viz. 210 coorkums of malgoozary poonjah land yielding annually rupees 61-4-0 is decreed to Plaintiffs, Appellants.

17. The costs, original and appeal, to be borne by the Defendants, Respondents.

THE 20TH JANUARY 1857.

Appeal Suit No. 179 of 1855.

Appeal from the decision of Soobbianarasiah, District Moonsiff of Dindigul, dated 30th October 1855.

Sunkerom Pillay, Appellant, (Plaintiff,)

versus

1. Kamatchee Ausary, and
2. Soobban Ausary, } Respondents, (Defendants.)

1. This was an action for recovery of a piece of malgoozary nunjah land annually yielding rupees 63-7-3

2. The plaint sets forth that the land in question belonged to Plaintiff's uncle Vailoo Pillay, under entries in his name in the accounts of fusly 1212. From that fusly the said uncle and his heirs, the Plaintiff's father, and Plaintiff himself, enjoyed the land till fusly 1238, when the Plaintiff's uncle let the land for cultivation upon verbal agreement to the 1st Defendant, who accordingly cultivated it, but he having caused a puttah for the land to be made out in his name, the Plaintiff's uncle again took possession of it in fusly 1240, but died subsequently without male descendants. The Plaintiff being his heir kept possession of the land uncultivated from fusly 1240 to 1255 in consequence of the channel, by which the land was irrigated, being out of repair. In fusly 1256, the Plaintiff cultivated it with raghy grain which the 1st Defendant destroyed, and recultivated it, sowing the same grain. The Plaintiff complained to the revenue authorities, who referred him to the Civil Court. Hence this suit.

3. In his answer the 1st Defendant denies the truth of the plaint and states, that the village wherein the land in question is situated, belongs to mahazenems. They laid a claim against the Plaintiff's uncle and other ryots, who cultivated the lands, and obtained puttahs in their names during the fysel settlements, upon which the Plaintiff's uncle and other ryots executed an attachee before the Tahsildar of Tenkaray under date the 4th August 1802 to the effect that they had no claim to the lands inclusive of the one in disputn, and that the mahazenems were at liberty to dispose of them as they pleased. The mahazenems gave the land in dispute to the 1st Defendant in fusly 1238 when the Circar transferred the same to him. The 1st Defendant then reclaimed the

land at an outlay of 50 rupees and brought it under cultivation in fusly 1239, but suffered it to be waste till fusly 1255, owing to the channel which irrigated the land being in a defective state. The 1st Defendant repaired the channel and cultivated the land in fusly 1256, but the Plaintiff forcibly destroyed the crops, whereupon the 1st Defendant laid a complaint before the revenue authorities, who, under date the 14th October 1846, issued an order directing the 1st Defendant to enjoy the land. Ever since the 1st Defendant continues to enjoy the same.

4. The 2d Defendant allowed the case to go by default.

5. The District Moonsiff non-suited Plaintiff with costs, being of opinion that the Plaintiff had not established his claim by oral and documentary evidence.

6. Against this judgment the Plaintiff appeals on the following grounds, viz.

1st. That he has proved by 3 documents and witnesses that his uncle left the land in question upon verbal agreement to the 1st Defendant for cultivation, and that the Moonsiff's observation that the witnesses contradicted each other in their statements is incorrect;

2d. The Moonsiff further objects that the land in question was not in the enjoyment of the Appellant, although the Respondent admits that the land in question was entered in the name of his, Appellant's, uncle till fusly 1237, and that it lay waste from fusly 1240 to 1256;

3d. The statement of the Respondent that the Plaintiff's uncle and other ryots have given an attachee to the talook authority regarding the lands of the village is false.

7. The 1st Respondent on the other hand upholds the justice of the Moonsiff's decree and prays for its confirmation.

JUDGMENT.

8. The Court sees no reason to disturb the original decree.

9. The Plaintiff admits that Defendant came into possession of the land in fusly 1238, but states that it was only let to him on condition that he should give it up on demand. This assertion he entirely fails to prove, and moreover Exhibit No. 37 of the Defendant's document shews, that the land in question was wholly relinguished by Plaintiff's uncle, who was then in possession to the mahajanums of the village in 1823.

10. The Defendant states that the mahajanums made over

the land to him, and Exhibit No. 45 bears out his statement. This document is a list of puttahs for fusly 1238 in which Defendant's name is entered as puttahdar for the land in question.

11. The Defendant moreover has been in possession of the land since fusly 1238, although, owing to local circumstances, he allowed it to lie waste from fusly 1240 to 1255.

12. The appeal is dismissed ; Appellant to bear all costs.

THE 21ST JANUARY 1857.

Appeal Suit No. 90 of 1856.

Appeal from the decision of Soobbanarasier, District Moonsiff of Dindigul, dated 16th February 1856.

Narasingem Chetty, *alias* Condan Chetty, Appellant, (Plaintiff,)

versus

Pethy Naick, Respondent, (Defendant.)

1. The Plaintiff sued to recover rupees 23-2-7, being principal and interest due on a verbal agreement.

2. The plaint sets forth that in May 1850, both parties settled the accounts which had existed between Plaintiff and Defendant's undivided deceased elder uncle Chinnatumby Naick, when a balance of rupees 14-8-0 was struck against the Defendant, who promised to pay the same with interest within one month, but failed to do so. Hence this suit.

3. The Defendant denied the truth of the Plaintiff's claim and ascribed it to enmity.

4. The Moonsiff non-suited Plaintiff's claim with costs on account of the unsatisfactory nature of the evidence of his witnesses.

5. Against this decree the Plaintiff appeals on the ground, that his failure to adduce satisfactory proof in the original is, in consequence of some of his witnesses having been then absent in another Zillah. The Appellant therefore prays the Court to remand the suit for further investigation.

6. The Respondent upholds the justice of the original decree, and prays for its confirmation.

JUDGMENT.

7. The Court sees no reason to disturb the original decree or to remand the suit for further investigation as prayed for by Appellant.

8. The Plaintiff, Appellant, was called upon, and cited 6 witnesses to prove;

1st. That a certain sum was due to him by Defendant, Respondent;

2d. That the Respondent had made a verbal promise to pay Appellant such sum within a certain time.

9. The Appellant himself admits that the evidence of his witnesses do not bear out the statements contained in the plaint, but prays that further evidence may be taken on his behalf, as the witnesses, who could have proved the points recorded for him, were absent in another Zillah, when the Moonsiff went into the suit.

10. If this is true, why did not Appellant bring it to the notice of the Moonsiff, in order that such witnesses might have been summoned to give evidence in the original suit.

11. The decree of the Lower Court is affirmed. Appellant to bear all costs.

THE 26TH JANUARY 1857.

Original Suit No. 27 of 1856.

Sheikabeethoo Saib and another, Plaintiffs,

versus

Savoondrem and 85 others, Defendants.

Vencatachellamiengar and 4 others, Supplemental Defendants.

1. The Plaintiffs sued to recover from the Defendants a village called Narasingum and its hamlets and loss of produce for 1854, in all amounting in value and annual produce to rupees 2,433-10-11.

2. The plaint sets forth that the Plaintiffs' grandfather

Mahomed Goally Saib was the original owner of the village by right of purchase made in 1786. He and after him Plaintiffs' father enjoved it up to 1828 letting the same to the fathers of the 13th, 14th, 16th, 17th and 48th Defendants on swamibhogum tenure under an agreement. In 1829 the Plaintiffs' father died leaving Plaintiffs as minors under the protection of their mother, who presented a pauper petition to the late Zillah Court for recovery of the village in question and also for the arrears of swamibhogum rent from the fathers of the said Defendants, but was directed to file a regular pauper suit. She died without instituting it. The Plaintiffs were then minors and enlisted in the Military service. They were therefore unable to file this action prior to 12th July 1855.

3. The answers presented by 4th, 6th, 8th, 9th, 10th, 15th, 16th, 20th, 21st, 22d, 24th, 25th, 26th, 27th, 30th, 31st, 33d, 35th, 36th, 42d, 43d, 48th, 49th, 53d, 58th, 59th, 61st, 62d, 64th, 65th, 66th, 67th, 68th, 70th, 71st, 72d, 75th, 76th, 81st, 83d, 84th and 86th Defendants and by supplemental 1st, 2d and 5th Defendants severally and jointly deny the Plaintiffs' claim, and state that the village in question hereditarily belonged to the 26th Defendant; that the other Defendants purchased some of the lands thereof from him (26th Defendant) and some by Court sales &c. and continue to enjoy them and that this suit is barred by law of limitation.

4. The 13th, 41st, 51st and 82d Defendants in their answer admit Plaintiffs' claim.

5. The other Defendants allowed the case to be tried exparte.

6. Reply and rejoinder are filed.

7. Points for Plaintiffs ;

i. Prove that the villages in dispute were purchased by Plaintiffs' grandfather and that he enjoyed the same by digging tank and channel ;

ii. Prove that Plaintiffs' father let them on swamibhogum tenure to the fathers of the 10th and 22d Defendants.

iii. Prove that the payment of swamibhogum was continued till 1813;

iv Prove that the said villages were afterwards let on the same tenure to the fathers of the 13th, 16th, 17th and 48th Defendants ;

v. Prove that swamibhogum was partly paid and that an agreement was passed to the Plaintiffs' father on the 6th February 1852 for the residue;

vi. Prove that the said agreement was acted up to till 1828;

vii. Prove that Plaintiffs' father died in 1829 and that the Plaintiffs were then minors;

viii. Prove the particular time of the death of the Plaintiffs' mother, and of the Plaintiffs' admission as a recruit in the regiment; and that Plaintiffs' title to the villages in question has been recognized by the Circar, and also the particular quantity of land in possession of each of the Defendants;

ix. Prove the accurate value and profit of the villages in question and the justness of the Plaintiffs' claim to the swamibhogum amount claimed.

8. Points for 4th, 6th, 8th and 9th Defendants;

i. Prove that the lands in question do not belong to the Plaintiffs; but that they (Defendants) enjoy the same by renting them on cowle tenure and by selling them at their pleasure as stated in their answer.

9. Points for 10th Defendant;

i. Prove that the villages in question belong to the 26th Defendant and that he (10th Defendant) purchased some of the lands in question in public auction and continues to enjoy the same and that the litigated property is worth more than the value fixed to it by Plaintiffs.

10. Points for 15th, 30th, 33d and 42d Defendants;

i. Prove that they enjoy some of the lands in question by right of purchase from 13th Defendant's father and 68th Defendant.

11. Points for 16th and 43d Defendants;

i Prove that they enjoy some of the lands in question by right of purchase partly from 26th Defendant and partly in public auction.

12. Points for 20th, 21st, 27th, 31st and 36th Defendants;

i. Prove that they enjoy some of the lands in question by right of purchase from 13th Defendant's father and 26th Defendant and by reclaiming themselves.

13. Points for 22d Defendant ;

i. Prove that he enjoys some of the lands in question by right of purchase from 13th Defendant's father and 26th Defendant.

14. Points for the 24th, 25th and 35th Defendants ;

i. Prove that they enjoy some of the lands in question by right of purchase from 48th Defendant's father and 68th Defendant.

15. Points for 26th Defendant ;

i. Prove that the disputed lands, with the exception of Thuttangoolum village, were his hereditary property, and that he enjoys the same by transferring to others by sale &c.

16. Points for 48th and 49th Defendants ;

i. Prove that they enjoy some of the lands in question partly by right of purchase from 68th Defendant and others and by reclaiming certain portion with the permission of the 26th Defendant.

17. Points for 58th Defendant ;

i. Prove that he enjoys some of the lands in question by right of purchase, partly in private bargain with 13th Defendant and others and partly in public auction.

18. Points for 53d, 61st and 83d Defendants ;

i. Prove that they had purchased some of the lands in question from the 1st Defendant's husband and some from the 4th Defendant and others and continue to enjoy the same.

19. Points for 59th Defendant ;

i. Prove that he enjoys some of the lands in question by right of mortgage from the 13th Defendant's mother.

20. Points for 64th Defendant.

i. Prove that he purchased some of the lands in question from 71st Defendant and his elder brother and others and some in public auction and continues to enjoy the same.

21. Points for 66th and 67th Defendants ;

i. Prove that they enjoy some of the lands in question by right of purchase from the 13th Defendant's mother.

22. Points for 68th and 70th Defendants;

i. Prove that they hold some of the lands in question under deeds of sale and agreement obtained from Palanyappa Moodelly and 26th Defendant and 13th Defendants' father, and also produce the public documents in support thereof.

23. Points for 62d Defendant;

i. Prove that he enjoys 5½ goolies of poonjah land and a well in dispute by right of purchase from the 13th Defendant's father.

24. Points for 65th Defendant;

i. Prove that he enjoys some of the lands in question by right of purchase from 13th Defendant's father and 26th Defendant, and some by right of mortgage from Soobbaroyen and others.

25. Points for 71st and 72d Defendants;

i. Prove that he enjoys some of the lands in litigation by right of purchase from the fathers of the 13th and 26th Defendants and others and that his right and title has been recognized by the Circar.

26. Points for 75th Defendant;

i. Prove that he enjoys 20 goolies of poonjah land out of those in dispute by right of sale made to him by one Para Aisoo who purchased the same in public auction.

27. Points for 76th Defendant;

i. Prove that he enjoys some of the lands in dispute by right of mortgage from the 13th Defendant's mother and 26th Defendant;

28. Points for 81st Defendant.

i. Prove that he enjoys one cawny out of the lands in dispute by purchasing the same in public auction.

29. Points for 84th Defendant;

i. Prove that he enjoys a certain portion of the lands in question by right of purchase from the 68th Defendant.

30. Points for 86th Defendant;

i. Prove that he purchased some of the lands in question

from 13th Defendant's father and sold the same to the supplemental 2d Defendant.

31. Points for Supplemental 1st Defendant ;

i. Prove that he enjoys some of the lands in question by right of purchase from the Supplemental 3d Defendant and others.

32. Points for Supplemental 2d Defendant.

i. Prove that he enjoys some of the disputed lands by right of purchase from the 86th Defendant.

33. Points for Supplemental 5th Defendant ;

i. Prove that he purchased ⅛th of the village in question from the fathers of the 13th and 14th Defendants and from the 26th Defendant and continues to enjoy the same by letting it on swamybogum tenure to the 10th, 15th, 22d, 24th, 25th, 29th, 30th, 35th and 42d Defendants.

34. Further, the whole of the Defendants are directed to prove that the villages in question never belonged to the Plaintiffs.

35. As the 13th, 41st and 51st Defendants admit the Plaintiffs' claim they require no points for proof.

36. If the 81st Defendant had been possessed of any right to the disputed property he must establish the same by a separate action.

37. 24 exhibits for Plaintiffs and 52 for 15th, 16th, 22d, 24th, 25th, 26th, 30th, 33d, 35th, 42d, 43d, 48th, 49th, 53d, 61st, 62d, 64th, 65th, 66th, 67th, 68th, 70th, 71st, 72d, 75th, 83d, 84th and supplemental 1st, 2d and 5th Defendants.

38. 12 witnesses were examined for Plaintiffs and none for Defendants.

JUDGMENT.

39. In this case points were recorded and nearly the whole of the evidence parol and documentary was taken before the Mooftу Sudr Ameen's Court, at which stage of proceedings, it was called up by the Civil Court and referred for decision to the Subordinate Court.

40. It is admitted in the plaint that from 1828 to 1854, a period of above 20 years, the land was in the enjoyment of Defendants, during which time no effort was made by Plaintiffs to

recover their property. It is shewn moreover by Documents IV and V filed by Defendants that in the years 1826-27 the land was in possession of, and belonged to, the 26th Defendant.

41. The Plaintiffs urge that in 1831 after the death of their father, their mother under whose guardianship they were, motioned the late Zillah Court for permission to sue for the property now under litigation in formâ pauperis. To prove this, they file no document, although an authenticated copy of the Court's order on the petition (if any exists) might have been easily obtained; they further urge that after their mother's death they enlisted as Sepoys and have been debarred by the exigencies of the service from instituting this suit from 1854; this plea however is shewn to be false by documents I, II and III filed by Defendants by which it is clearly shewn that 1st Plaintiff was personally engaged in 2 suits before the Subordinate and Moonsiff's Courts in Madura in the years 1843 and 1849, respectively.

42. There can be no doubt that this suit is barred by the statute of limitations, and Plaintiffs having failed to assign satisfactory reasons why they did not proceed in the suit or to shew good and sufficient cause for not earlier seeking redress, the Court resolves to non-suit them directing them to bear all costs.

THE 30TH JANUARY 1857.

Original Suit No. 9 of 1855.

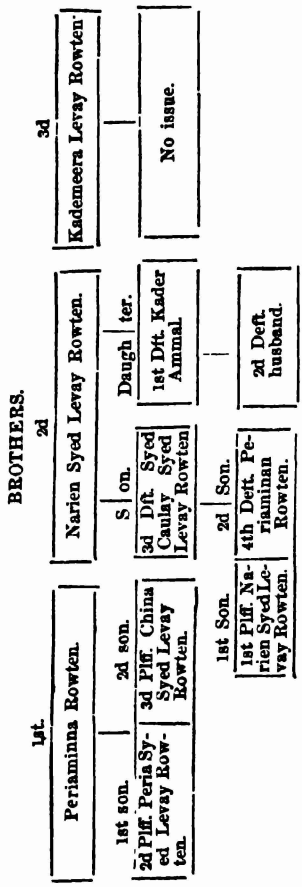
1. Narien Syed Levay Rowten,
2. Peria Syed Levay Rowten, } Plaintiffs,
3. Chinna Syed Levay Rowten,

versus

1. Kader Ummaul, her husband,
2. Ismalmeera Levay Rowten,
3. Syed Caulay Syed Levay Rowten,
4. Periaminna Rowten,
5. Kaneguttoomeera Levay Rowten,
6. Mahomed Meera Levay Rowten, } Defendants.
7. Chinna Caulay Rowten,
8. Syed Aulem Syed Levay Rowten,
9. Moostekan Nyna Rowten,
10. Vavah Saib Rowten, and
11. Moottoosawmy Pillay,

1. This is a suit brought by Plaintiffs by right of inherit-

ance for recovery of malgoozary, nunjah, poonjah and garden lands and a thatched house &c. as well as loss of produce, in all amounting in value to rupees 4,924-3-0.



2. The plaint sets forth that there were 3 brothers as shewn in the margin. They lived in an undivided family, but afterwards separated themselves owing to some disagreement among the female members of the family, and each continued to cultivate and enjoy without any regular division, some of the lands under puttahs in their respective names according to custom. The 2d brother during his life time took Sultan Ummaul as his 2d wife by "nickah" and abandoned her for some misconduct after she had given birth to the 1st Defendant. The 3d brother married her as his 2d wife by "nickah;" about 30 years ago, the 1st brother died. The 2d and 3d brothers gave the 1st Defendant in marriage to the 2d and granted her as dowry 18 $\frac{51}{16}$ goolies of nunjah land attached to the puttah of the 3d brother, and also a house to live in. The 2d brother died about 24 years ago, and the 3d 18 years back. The Plaintiffs and the 3d and 4th Defendants succeeded to the ancestral and self-acquired property of the deceased, but the 1st Defendant, with the assistance of the other Defendants, laid claim to the property enjoyed by the deceased 3d brother and took possession of it under the order of the Sub Collector, which referred the party dissatisfied to Civil Court. Hence the Plaintiffs file this suit including the 3d and 4th Defendants, as the former is favorable to the cause of 1st and 2d Defendants, and as the latter has married their daughter. The share of the property due to the 4th Defendant is excluded.

3. In their answer the 1st and 2d Defendants deny the truth of the plaint and state, that about 40 years ago the 3 brothers referred to divided their family property and lived separately without any connexion with each other. The 1st Defendant is the daughter of the 3d brother and not of the 2d. The 3d brother gave the 1st Defendant in marriage with certain lands attached to his puttah as dowry. Upon his death the 1st Defendant succeeded to his

property inclusive of that acquired by means of his nickah wife's estate and enjoys it.

4. The 1st and 2d Defendants further state that they instituted a suit before the Dindigul Moonsiff's Court for recovery of one year's loss of produce, which the Plaintiffs forcibly appropriated. It has been referred to this Court, and filed in No. 19 of 1855.

5. In his answer the 3d Defendant, father of the 1st Plaintiff and of the 4th Defendant, admits Plaintiffs' claim and states that the 1st Defendant was born to his father (2d brother) under whose charge she (1st Defendant's mother) left her daughter with a deed of acquittal dated 13th Peratasy year Angerasah 1812 (27th September) and went and married again the 3d brother.

6. The reply contains nothing new.

7. The 1st and 2d Defendants' rejoinder states that the deed of acquittal is a recent fabrication.

8. The Defendants 4 to 11 were declared exparte.

9. Points for Plaintiff,

1st. That the 1st Plaintiff's grandfather and his two brothers were undivided;

2d. That they are entitled to the property of the 3d brother Kadermeera Levay Rowten.

10. Points for 1st Defendant;

1st. Prove that Kadermeera Levay Rowten was a divided member of the family, and that she is his daughter and entitled to his property.

11. Four exhibits were filed for Plaintiff and eleven for Defendants.

12. Six witnesses were examined for Plaintiff and ten for Defendants.

JUDGMENT.

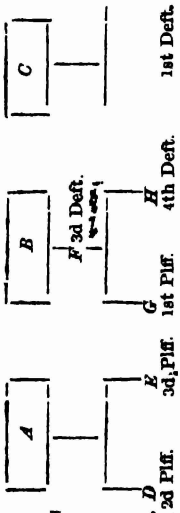
13. After a careful consideration of the records of this case, it appears to the Court that the Plaintiffs have entirely failed to prove the points recorded for them.

14. In the 1st place it is admitted by both parties, that the 1st Plaintiff's grandfather and his two brothers lived separate-

ly ; that separate puttahs were issued to each, and the complete division of the family interest is shewn by the decree passed by the Hindoo Sudr Ameen in Original Suit No. 194 of 1836.

15. The 1st Defendant proves beyond doubt by documents I to IV inclusive, and documents VI to XI inclusive, that she is the daughter of the 3d brother Kadermeera Levay Rowten, and not of the 2d brother Marien Syed Levay Rowten, as stated in the plaint.

The case therefore stands as in the margin ; *A*, *B* and *C* are three divided brothers.



A dies and leaves 2 sons *D* and *E* 2d and 3d Plaintiffs ; *B* dies and leaves 1 son *F*, 3d Defendant, who has two sons *G*, the 1st Plaintiff, and *H* the 4th Defendant.

16. *C* also dies without male issue leaving one daughter *I*, 1st Defendant, by a nickah marriage.

17. The question arose as to who was the lawful heir to the property of *C*. Could his daughter *I* succeed to it, or had the male descendants of *A* and *B* by a shadee marriage, a prior claim to the whole, or any part of it. This was referred to the Mahomedan law officer who recorded his opinion.

i. That the property acquired by *C* by means of the estate of his nickah wife must descend wholly and entirely to his daughter.

ii. *A* moiety of *C's* ancestral property must descend to his daughter *I*, the remaining moiety to be divided into two shares one of which to be given to *D* and *E* sons of *A*, the other to *G* and *H* grandsons of *B*.

iii. The law officer ignores all distinction between the nickah and shadee wives, who are looked upon, he says, in the same light.

18. The 3d brother, father of the 1st Defendant, died about 18 years ago ; after his death it is proved that her mother enjoyed the land till 1843, when she died. In 1844 the Plaintiffs con-

trived to get possession of the land, but were ousted therefrom by the revenue authorities in May* 1845 from which time up to 1855, when this suit was instituted, 1st Defendant has been in undisturbed enjoyment of the land.

* Exhibit No. IV.

19. It is shewn in evidence that part of the property under litigation was acquired by means of the estate of the nickah wife of 1st Defendant's father, and to such portion, by the principles of Mahomedan law, the Plaintiffs can have no claim. It is impossible for the Court to determine from the evidence before it, whether the moiety of the ancestral estate of 1st Defendant's father, which according to Mahomedan law, should be divided between 1st, 2d and 3d Plaintiffs and 4th Defendant, forms a portion of the property sued for or not, and this must form the subject of another action.

20. It is worthy of note here that the 4th Defendant, who is equally interested with the 1st, 2d and 3d Plaintiffs, in the partition of the ancestral estate of 1st Defendant's father, as stated above, has been included as a Defendant in this suit, because he refused to join his brother and uncles in instituting it.

21. The Court resolves to non-suit the claim of Plaintiffs with costs, but this decree is not intended to bar the institution of any suit for the recovery of a rightful share of the ancestral estate of 1st Defendant's father, Kadermeeralavay Rowtten.

THE 31ST JANUARY 1857.

Appeal Suit No. 62 of 1856.

Appeal from the decision of Soobbanarasier, District Moonsiff of Dindigul, dated 30th January 1856.

Vullaacondan Shervagaren, Appellant, (Plaintiff,)

versus

Poosary Mooddagounden, Respondent, (Defendant.)

1. This suit was brought to recover $15\frac{21}{64}$ goolies of garden land annually yielding rupees 26-5-1, and a well therein situated valued at rupees 50, and also to recover rupees 222-10-4, being surplus profit of produce enjoyed by Defendant.

2. The plaint sets forth that the land in question belonged

to Plaintiff's father, who on the 15th April 1833, mortgaged it to the Defendant for rupees 5 and 5 colums of cumboo grain for a term of 5 years under a bond, obtaining a counter document to that effect. In 1836 the Plaintiff's father died leaving the Plaintiff as a minor, who in 1848, demanded the restoration of the land from Defendant and referred the matter in 1849 to certain mediators, before whom, the Defendant promised to give up the land after enjoying the 2d crop, which promise he not only failed to fulfil, but also dug a well therein and enjoys the land, obtaining puttahs in his name. The Plaintiff failed to bring an action at an early period for want of pecuniary means and now sues for the land and mesne profit for 22 years from the time of mortgage up to 1855, after allowing deduction for all expenses, and the mortgaged amount as detailed in the plaint.

3. In his answer the Defendant denies the truth of the plaint and states, that the Plaintiff's father sold the land in dispute for rupees 25 and executed to him a bill of sale under date the 14th May 1832. Ever since the Defendant enjoys the land under puttahs in his name and also dug a well at an outlay of rupees 133-12-0.

4. The Moonsiff non-suited the Plaintiff's claim with costs being of opinion, that the witnesses for the Plaintiff are his relations, and their statements could not be admitted. Moreover the Plaintiff admits the Defendants enjoyment for 22 years, and that he had dug stone well. If the Plaintiff had truly demanded, and the Defendant had promised to return the land, how was it that he did not obtain a document to that effect? The Moonsiff being further of opinion that the defence was good and satisfactory, decreed in favor of Defendant.

5. Being dissatisfied with this decision the Plaintiff appeals on the following grounds, viz.

1st. The Plaintiff clearly proved by the document marked No. 8 and by the evidence of 7 witnesses, that the land in question was mortgaged to Defendant whereas the Moonsiff's observation that the land had been enjoyed by Defendant for a period of 22 years by right of purchase is unjust;

2d. The Plaintiff was prevented from bringing an action at an early period for want of precuniary aid as stated in his original plaint. The Moonsiff's reasoning that the Plaintiff's mother, or the Plaintiff having failed to redeem the land, paying the small amount of mortgage, or to put forward their claim at an early date, is uncalled for;

3d. The witnesses for the Plaintiff are men of rank and neighbouring landholders, whose evidence the Moonsiff objects, while he admits that of the 3 incompetent witnessses on the part of the Defendant.

6. The Defendant (Respondent) on the other hand upholds the justice of the Moonsiff's decree and prays for its confirmation.

JUDGMENT.

7. The Court sees no reason to interfere with the original decree. The Respondent has been in possession for 23 years and holds a title deed for the land litigated for. The only excuse made by the Appellant for not bringing an action earlier to recover the land which he claims, is want of pecuniary means. If such was the case, he could have filed a suit as a pauper. Appeal dismissed with costs.

ZILLAH MANGALORE.

PRESENT: J. R. KINDERSLEY, ESQ., ACTING SUBORDINATE JUDGE.

THE 5TH JANUARY 1857.

Appeal Suit No. 15 of 1854.

Appeal from the decision of Munjoonathaya, District Moonsiff of Pootoor, dated 28th October 1853.

Anyal Jetannallwa, (Defendant,) Appellant.

Rama Krooshna Prubhoo, (Plaintiff,) Respondent.

1. The Plaintiff sued for recovery of rupees 59-13-6, being principal and interest thereon up to the date of plaint due on a bond executed to him by the Defendant on the 3d July 1845.

2. The Defendant denied the Plaintiff's claim in toto and proposed settlement of the matter by oath.

3. The Moonsiff considering that the Plaintiff had established his claim passed a decree for the amount sued for.

4. The Defendant appeals stating;

1st. That none of the attesting witnesses of the plaint bond are residents of Mangalore where it is alleged the execution of the bond took place;

2d. That of the above witnesses the 1st is a notorious bad character and the 2d a debtor of Plaintiff; and

3d. That himself is a man of substance and could hardly

have had occasion to ask a loan of such a small sum of money as 12 rupees from Plaintiff; and that it is equally improbable that Plaintiff would bring the money to Mangalore to lend it to him (Defendant).

5. The Plaintiff appeared by Vakeel in appeal but did not answer.

JUDGMENT.

6. The Appellant, having failed to defend the original suit, has shewn no reason in the appeal for interfering with the Moonsiff's decree, which appears to be perfectly correct. The Appellant has shewn no reason for discrediting the evidence of the witnesses in the original suit, and has neglected the opportunity which was open to him of proving before the Moonsiff that the transaction was upon the face of it very improbable. The 3d witness to whose character the Appellant takes exception does not appear to have been examined.

7. For these reasons the original decree is confirmed, and the appeal dismissed with costs.

THE 5TH JANUARY 1857.

Appeal Suit No. 20 of 1854.

Appeal from the decision of Annappaya, District Moonsiff of Siriyar, dated 21st November 1853.

Gunnapaya Bhut, (Defendant,) Appellant.

Juvallimullgy Murigooroo Viroopaxaya, (Plaintiff,) Respondent.

1. The Plaintiff sued for recovery of rupees 32, principal and interest up to the date of plaint due on a memorandum executed by the Defendant in his own handwriting on the Plaintiff's ledger book on the 9th Shravana bhol of the year Keelaka (23d August 1848). The Plaintiff alleged that of the principal rupees 23-12-0 rupees 21-8-0 was the value of cloths supplied to the Defendant and rupees 2-4-0 were due on an assignment.

2. The Defendant answered denying the Plaintiff's claim. He pleaded that the suit was the result of enmity entertained by the Plaintiff against his (Defendant's) father the potail of the village in consequence of his having failed to trace out a case of theft committed in the Plaintiff's house.

3. The Moonsiff decided the suit in favour of Plaintiff, being of opinion that the Plaintiff's evidence had proved his case, although the statement of the witnesses differed from the Plaintiff's allegation as regards rupees 21 mentioned in the plaint. This difference he observed had been satisfactorily accounted for by the Plaintiff.

4. The Defendant appeals urging ;

1st. That the Moonsiff has not referred to the vouchers mentioned by him as proving his plea of enmity, nor has he duly considered the Plaintiff's refusal to take oath ;

2d. That the memorandum filed by Plaintiff is quite opposed in tenor to the statement of his plaint ; and

3d. That witnesses examined for Plaintiff are exceptionable and their statements contradictory.

5. The Plaintiff answers in appeal stating ;

1st. That the Moonsiff had been satisfied that the writing of the plaint memorandum corresponded with the handwriting of the Defendant contained in other papers, but the circumstance has not been accounted for in the appeal by the Defendant ;

2d. That there could be no reason for him to bear enmity towards the Defendant's father who was a mere potail, and that he had preferred his complaint before the Magistracy ;

3d. That it was through inadvertence of the writer that rupees 21-8-0 were mentioned in the plaint as being the value of cloths ; and

4th. That he had consented to take oath at Chowlikeray devastan, but that Defendant had objected to it.

JUDGMENT.

6. The Acting Subordinate Judge does not consider that the plaint bond *A* has been satisfactorly proved.

7. The plaint dated 17th October 1851 specifies that rupees 21-8-0, forming the larger part of the sum sued for, had been due by the Defendant on account of cloths furnished to him by the Plaintiff. The Plaintiff though directed to file the bond within 7 days from the 14th October 1852 did not do so until the following March, and the bond thus filed 18 months after the plaint sets forth that the sum of rupees 21-8-0 was furnished by the Plaintiff

to the Defendant at the time of its execution in ready money, which agrees with the evidence of one of the witnesses, though the other witness makes it rupees 22-8-0.

8. The Plaintiff in explanation states that by a slip of the hand he had erroneously mentioned in the plaint that the amount was due for cloths supplied to Defendant; but the error is a very significant one.

9. It is remarkable that of the four witnesses cited by the Plaintiff only two were produced though he obtained a month to produce a third. Neither of the two witnesses examined mention for what purpose the sum was borrowed, nor the names of the other persons present at the time of the execution of the bond, and the one who had attested the document had done so with the common mark of ⊚.

10. The bond has been filed upon a leaf of paper, apparently torn from another, bnt there is nothing to shew that it ever belonged to Plaintiff's ledger. The figures on the back of it appear to be quite unintelligible, instead of forming a part of a regular account.

11. The Plaintiff admits in his appeal answer that he had filed a complaint against the father of Defendant, and one of the witnesses admits that Defendant's father had sued out the execution of a decree against him.

12. For these reasons the evidence of the witnesses is discredited, and the decree of the Moonsiff reversed. The Plaintiff is to bear all the costs both in the original suit and in appeal.

THE 6TH JANUARY 1857.

Appeal Suit No. 19 of 1854.

Appeal from the decision of Sheik Hamed, Acting District Moonsiff of Caup, dated 29th November 1853.

Soobbannaya, (Defendant,) Appellant.

Sobraya, (Plaintiff,) Respondent.

1. The Plaintiff sued for recovery of rupees 26, being part of rupees 82 advanced by him to the Defendant on the 12th September 1848 as the value of 54 trees with which the latter had agreed to furnish him. Of these the Plaintiff received only 34

trees and when he had gone to cut the remaining trees the Defendant resisted and offered to return the value thereof rupees 26 with interest, which he accordingly claimed.

2. The Defendant denied the truth of the plaint and stated that the Plaintiff owed him rupees 15, the value of one jack tree taken by the Plaintiff from him the third time, he having already paid him rupees 40, the price of 35 trees supplied to him before.

3. The Moonsiff on consideration of the evidence adduced by the parties was of opinion that the Plaintiff had proved his claim while one of the two witnesses examined for Defendant denied all knowledge and the other deposed much in favor of Plaintiff. He accordingly passed a decree in favor of Plaint ff.

4. The Defendant appeals urging;

1st. That the Moonsiff is not justified in having given his award in favor of Plaintiff on the ground of oral evidence alone;

2d. That the Plaintiff's refusal to submit to a settlement of the dispute by oath was of itself sufficient to throw suspicion on his case;

3d. That it is quite improbable that the Plaintiff would at once pay him rupees 82 without obtaining any written document for the same;

4th. That the witnesses for Plaintiff have deposed in his favor in return of the obligations rendered to them by the Plaintiff by bearing evidence in their own suits;

5th. That their statements as regards payment of money and the agreement about trees &c. are contradictory.

5. The Plaintiff did not appear in appeal to make answer.

JUDGMENT.

6. The Acting Subordinate Judge considers that the Appellant having failed to establish his original defence has equally failed in appeal to shew any sufficient reason for interfering with the original decree.

7. It certainly appears strange that the Plaintiff should have advanced so large a sum as rupees 82 to the Defendant without taking any written document for it, but he appears to have done so in the presence of several witnesses, and the Acting Sub Judge has failed to discover any important discrepancies in their depositions. Considering the frequency of these petty dis-

putes, the circumstance that the witnesses, or some of their relations, and the Plaintiff have previously given evidence for each other only shews that they were acquaintances who would naturally be called upon to witness any passing transaction. The 1st witness was cited by both parties and was the head of the village.

8. In regard to the Plaintiff's refusal to settle the matter by oath, it is to be observed that people of respectability frequently object to adjust a petty dispute in such a solemn manner.

9. The Acting Sub Judge therefore will not disturb the Moonsiff's decree, and the appeal is dismissed with costs.

ZILLAH RAJAHMUNDRY.

PRESENT: J. H. BLAIR, ESQ., SUBORDINATE JUDGE.

THE 14TH JANUARY 1857.

Appeal Suit No. 49 of 1855.

Appeal from the decision of Saumenany Venkatadry Nair, District Moonsiff of Peddapoor, dated 14th May 1855; in Original Suit No. 532 of 1854.

Moollapoody Raumasa, (2d Defendant,) Appellant,

Do. Sodama, mother and guardian to Venkia, minor, } 1st Defendant,

versus

Moollapoody Nursamah, (Plaintiff,) Respondent.

1. 2d Defendant in original suit appeals against the decree of the District Moonsiff of Peddapoor, awarding to Plaintiff rupees 12 maintenance for 1854, and future maintenance at the same rate to be paid by 2d Defendant, and the other members of the undivided family, of which he and Plaintiff are joint members.

JUDGMENT.

2. There does not appear any necessity for going into the appeal grounds &c. as the original decree is in itself defective, and must be remanded.

3. The original suit was brought against 2 Defendants, members of an undivided family, the pleadings on both sides shewed that there were other members of the same family, and

the Plaintiff should have been directed by the District Moonsiff to file an amended plaint, including them also ; the District Moonsiff omitted to do so, but after the examination was closed, decreed against Defendants, and the other members of the family, who had never been sued at all ; consequently if the decree in its present form were sued out, it could not legally be carried into execution.

4. The District Moonsiff should also take into consideration the objection made by 2d Defendant, that the fees of the office of purohit held by him, should not be included as family and indivisible property, and take evidence as to whether in the event of a subsequent division, the above fees would be divisible or not.

5. Plaintiff should be directed to file a supplemental plaint including Jugganah's widow and her 2 minor sons, as Defendants.

6. The suit is therefore remanded on the above *two points.*

7. A decree to be given *de novo*, and provision to be made therein for the costs incurred in this appeal. Stamp duty shall be refunded to Appellant under Circular Order Sudr Udalut No. 127.

THE 14TH JANUARY 1857.

Appeal Suit No. 72 of 1855.

Appeal from the decision of Saumenany Venkatadry Naidoo, District Moonsiff of Peddapoor, dated 12*th May* 1855 ; *in Original Suit No.* 438 *of* 1854.

Traudy Venkiah, mother and guardian of Atchepundah, } (Plaintiff,) Appellant,

versus

1. Traudy Atchepundah,
2. Do. Somoo Pundah,
3. Do. Venkatraze, } (Defendants,) Respondents.

1. The District Moonsiff dismissed Plaintiff's claim against Defendants, for a maintenance of 2½ rupees monthly, and 2 rupees for cloths yearly, until her son (a minor) attained his majority, and directing that she should reside with her husband, who is willing to maintain her.

2. Plaintiff appeals, and states the following reasons ;

i. That in obedience to the decree, she and her children went to 2d Defendant, but he refused to admit her into his house, or maintain her ;

ii. That as 2d Defendant refused as above stated, he should be ordered to provide her and her children with a separate maintenance as originally sued for;

iii. That she proved 2d Defendant's possession of much property.

3. 1st and 3d Defendant (who are answerable for 2d Defendant) answer supports the decree of the District Moonsiff, and states that 2d Defendant is willing to maintain Plaintiff as thereby ordered, but that Plaintiff and her children never came to his house, nor did he ever refuse to receive them. That Plaintiff has brought this appeal, hoping to obtain a separate maintenance in money, but that they cannot pay it.

"JUDGMENT."

4. The Subordinate Judge considers that this appeal ought never to have been admitted. If 2d Defendant would not obey the decree of the District Moonsiff, Plaintiff should have sued out the execution thereof, and unless she did so and failed to obtain redress from the District Moonsiff, she has no right of appeal.

5. The appeal is therefore dismissed with costs.

THE 19TH JANUARY 1857.

Appeal Suit No. 332 of 1854.

Appeal from the decision of Daumaraze Sunnaseraze, Acting District Moonsiff of Amlapoor, dated 19th June 1854 ; in Original Suit No. 406 of 1852.

Goondoobogoola Raumunnah, (Defendant,) Appellant,

versus

1. Codavaty Atchootaramunnah,
2. Nakauty Venkanah,
3. Do. Seetunnah,

(Plaintiffs,) Respondents.

1. Defendant appeals against the decree of the District

Moonsiff, awarding to Plaintiffs, the sum of rupees 400, and costs, being the amount due as cist of one Aga Meerja Sahib's cuttoobady enam land, which had been given up by him to Plaintiffs, and was leased out by them to Defendant.

2. His reasons for appeal are ;

i. That the District Moonsiff considered the execution of document *A* proved, though there were discrepancies in the evidence of 1st, 6th, 8th and 9th witnesses for Plaintiffs ;

ii. That his witnesses proved the truth of the documents filed by him ;

iii. That Plaintiffs' documents *B*, *C* and *D* ought not to have been considered, as it clearly appeared they had been fabricated by Plaintiffs and Aga Meerja Sahib ;

iv. That he proved that he did not cultivate the land in 1832, yet the District Moonsiff ordered him to pay rupees 200 cist ;

v. That the Plaintiffs, Aga Meerja Sahib and the Amlapoor Tahsildar, having combined together, entered stipulations in the rauzeenamah without his knowledge ; that being an illiterate man, he did not know what was entered in it, and therefore the District Moonsiff ought not to have taken it into consideration.

3. Answer not filed.

JUDGMENT.

4. The facts of the case are, Aga Meerja Sahib borrowed a large sum of money from Plaintiffs, to liquidate the debt, he executed to them a document *C*; in that document, it is stated that he gave cowls *D* and *B* to Plaintiffs, the cowl *B* being one given by him previously to Defendant for 10 years from 1848 to 1857 ; cowl *D* being one to Plaintiffs, cancelling cowl *B*, and leasing the land to Plaintiffs from 1849 to 1862. Plaintiffs then sublet the land to Defendant for 4 years from 1849 to 1852 inclusive, for a cist of rupees 200 yearly, and 100 rupees cuttoobady, total 300. Defendant paid the rent for 1849, and half for 1850, but failing to pay the remaining half for 1850, and the rent for 1851, a complaint was made in February 1851 to the Amuldar of Amlapoor by Plaintiffs. Defendant then gave in a rauzeenamah before him, agreeing to pay the 300 rupees due in 4 instalments, he only paid rupees 100, and also failed to pay the cist for 1852, for the total of rupees 400, the original suit was brought. His defence was that he never executed cowl *A*; that he rented the

land from Aga Meerja Sahib, and paid at rupees 200 a year for 3 years in succession to Plaintiffs on Aga Meerja Sahib's account by *his* orders. That he did not know what was written in the rauzee before the Amuldar, and cannot therefore be judged on its contents. The District Moonsiff in his decree, which is very lengthy, and contains much irrelevant matters regarding Aga Meerja Sahib's debts to Plaintiffs, grounds his decision on the following points.

5. Aga Meerja Sahib was examined as a witness for Defendant; he admitted the execution of document *C*, which states that he gave the cowls *B* and *D* to Plaintiffs, though in his deposition, he says he will not swear to his signature on *D* and *B*. The District Moonsiff very properly considers his admission of document *C*, in which the terms of *B* and *D* are stated proof, that the land was leased to Plaintiffs; he further was of opinion that the evidence of Plaintiffs' witnesses, and the *terms of the rauzeenamah* given by Defendant, prove that the cowl *A* was executed, and that Defendant had subrented the land from Plaintiffs, on the terms of that cowl for 4 years. He discredited Defendant's statements, and documents in toto, believing that he and Aga Meerja Sahib had together fraudulently and collusively drawn up the documents filed by Defendant, for the purpose of cheating Plaintiffs, out of part of the amounts due by Defendant, and Aga Meerja Sahib. In this opinion, the Subordinate Judge coincides. He has no doubt whatever that the whole defence was got up by those two persons; and considering the reasons adduced in appeal, to be most groundless and litigious, resolves to dismiss the appeal with costs, and further under Section XXXV, Regulation IV of 1802, to fine Defendant 10 rupees.

THE 20TH JANUARY 1857.

Appeal Suit No. 25 of 1855.

Appeal from the decision of Saumenany Vencatadry Naidoo, District Moonsiff of Peddapoor, dated 16th February 1855; in Original Suit No. 145 of 1854.

Soonkavilly Vencatroydoo, (Defendant,) Appellant,

versus

Gokena Ramalutchmy, (Plaintiff,) Respondent.

1. Defendant appeals against the decree of the Peddapoor

District Moonsiff awarding to Plaintiff rupees 60, the value of 4 candies of paddy, due by Defendant to Plaintiff, on account of her land leased out to him in fuslies 1260 and 1261.

2. He pleads that;

i. Plaintiff made no claim for 2 years after the paddy was due;

ii. Plaintiff did not prove that no cowls and cuddapas were executed;

iii. His witnesses proved his defence;

iv. 1st witness is not a professional one, and 2d, 4th and 5th, Masooldar and Curnums, are his superiors, not under him, he being only village Moonsiff;

v. Moonsiff should not object that Plaintiff would not have leased out her land producing 4 candies yearly for rupees 10 cist.

3. Plaintiff's answer supports the decree of the Moonsiff, and further states with reference to Defendant's 1st reason, that she complained to the Magistrate when he did not pay her half share of the produce, and was referred to the Civil Courts.

JUDGMENT.

4. Defendant pleaded as a set off against Plaintiff's claim, that in fusly 1260 she borrowed from him rupees 50, gave a bond for the same, and a cowl for the land renting it to him at a cist of rupees 10, by which Defendant would be repaid the loan in 5 years. Defendant also filed a cross suit against Plaintiff Original Suit No. 148 of Peddapoor District Moonsiff's file, for the payment of rupees 30, the balance of principal said to be due thereon, which was also dismissed, and appealed against in No. 26 of 1855 Civil Court's file.

5. The Subordinate Judge concurs with the Moonsiff in his appreciation of the evidence for both parties.

6. There was no occasion for Plaintiff to prove the non-execution of cowls and cuddapas, but Defendant's own admission that he took the land on half share of produce for cultivation, and the evidence of the Plaintiff's 2d and 3d witnesses that he delivered half produce in fusly 1259, shews that none were executed for that fusly and it was not therefore necessary to prove their non-execution for 1260 and 1261.

7. His witnesses do not prove that Plaintiff borrowed 50 rupees gave a bond, and executed cowls and cuddapas for 5 years at a cist of rupees 10 yearly, and the Moonsiff justly considered it most unlikely that Plaintiff (who lends money herself, and had done so on the very land in question) would lease it for half its value to a 3d person.

8. Defendant's 1st witness is clearly a professional one, and unworthy of credit, and though Defendant calls the Curnums and Masooldar his superiors, the Subordinate Judge considers them his subordinates, and moreover one who would be extremely likely to depose exactly as he wished, which they have evidently done in this case.

9. For the above reasons the appeal is dismissed with costs.

THE 20TH JANUARY 1857.

Appeal Suit No. 26 of 1855.

Appeal from the decision of Vencatadry Naidoo, District Moonsiff of Peddapoor, dated 16th February 1854; in Original Suit No. 148 of 1854.

Soonkavilly Vencatroydoo, (Plaintiff,) Appellant,

versus

Gokena Ramlutchmy, (Defendant,) Respondent.

1. Plaintiff appeals against the dismissal by the Peddapoor District Moonsiff of his suit against Defendant for rupees 44-12-0, balance of principal and interest due on a bond said to have been executed by her in his favour.

2. He urges that;

i. He proved the execution of the bond;

ii. Refers to his appeal reasons in Appeal Suit No. 25 of 1855, against the Moonsiff's decision in this suit, and Original Suit No. 145 of 1854.

3. Answer not filed.

JUDGMENT.

4. This suit is intimately connected with Original Suit No.

145 of 1854. The evidence of the Plaintiff's 4 witnesses had already been taken by the Moonsiff for the defence in that suit. He therefore only took depositions from the witnesses referring to those given by them in No. 145, and in his decree stated that having already in the decree in Original Suit No. 145 entered fully into his reasons for discrediting the Plaintiff's statements regarding the bond, on which this suit was founded, and the evidence adduced in support of it by these same witnesses, he did not consider it necessary to state them again, and dismissed Plaintiff's claim.

5. The Subordinate Judge concurs with the Moonsiff in the correctness of his finding, for the reasons already given by him in Appeal Suit No. 25 of 1855, and therefore dismisses this appeal with costs.

THE 28TH JANUARY 1857.

Appeal Suit No. 50 of 1855.

Appeal from the decision of Saumavadum Sreenevascharloo, Acting District Moonsiff of Amlapoor, dated 19*th May* 1855; *in Original Suit No.* 351 *of* 1854.

Dasum Reddy, (Plaintiff,) Appellant,

versus

1. Polapaukoola Lunkadoo,
2. Muttapurty Gungadoo,
3. Do. Sooradoo (2d Defendant's eldest son),

(Defendants,) Respondents.

1. Plaintiff appeals against the decree dismissing his claim for rupees 64-15-11 due, and rupees 62 including interest a future instalment on a bond, said to have been executed by 1st Defendant, 2d and 3d Defendants being securities for the payment on the 19th March 1854.

2. His reasons are;

i. That he proved the execution of the bond, and the loan of the rupees 31-4-0;

ii. That it is usual for retail dealers to settle their accounts from recollection and draw up a deed which was done in this case, a further sum being also lent at the time;

iii. That the Moonsiff omitted to state in his decree, that he called up Mahalutchmee again, who declared on oath that 1st Defendant got him to come, and depose falsely before the Court, for which the Moonsiff fined him one rupee, declaring his belief that Plaintiff had persuaded him to do so, not Defendant.

3. Defendants' answer affirms the decree of the Moonsiff that the suit is got up and totally false.

JUDGMENT.

4. The Subordinate Judge concurs with the District Moonsiff in his appreciation of the evidence of Plaintiff's witnesses. Their statements are most suspicious and improbable, and in addition to the reasons given by the Moonsiff for disbelieving their evidence, the Subordinate Judge notes the following several others, which confirm his opinion of the falsity of Plaintiff's claim, viz. 7th and 8th wttnesses state that about a year or so before the bond was written, a verbal settlement of accounts took place in 1st Defendant's house, at which they were present. That the items were then the same as they were when the bond was said to be drawn up a year aferwards, but that no account was written; these two witnesses also differ in their statements as to 1st Defendant's presence at the time; they further state that Plaintiff told them to be witnesses, why or wherefore, they know not. 9th witness declares that Plaintiff about September 1853 shewed him a cadjan account, on which the items were entered. No account is mentioned as being produced at the execution of the document 6 months afterwards, which of course would have been for these reasons given by the Moonsiff. The Subordinate Juge resolves to dismiss the appeal with costs.

THE 31ST JANUARY 1847.

Appeal Suit No. 62 of 1855.

Appeal from the decision of S. Sreenevassa Charloo, Acting District Moonsiff of Amlapoor, dated 26th March 1855; in Original Suit No. 178 of 1854.

Iyesetty Jungum, (Plaintiff,) Appellant,

versus

1. Rednum Soobbaroydoo,
2. Do. Tirpateroydoo,
3. Do. Venkanah,
4. Do. Reddy *alias* Bauliah,
5. Bhomanta Somanah,
6. Nookala Paunakaloo,
7. Nullum Venkatanursoo,

(Defendants,) Respondents.

1. Plaintiff appeals against the decree of the Amlapoor District Moonsiff, dismissing his claim to a certain site of rupees, 20 value, and a road thereto of rupees 2 value.

2. He urges that;

i. He proved that the site belonged to him;

ii. Defendants did not prove they paid any thing for the site to his father;

iii. 1st Defendant though he took a bill of sale from his 3d witness, never took one from 6th Defendant, why not;

iv. It cannot be true, that the witnesses to the bill of sale taken from his 3d witness in August 1850, were also witnesses to the bill of sale said to be given by his father in 1836;

v. The rauzeenamah is false, and clearly on the face of it, shews it has been collusively got up by the Defendants themselves;

vi. The evidence of his and Defendants' witnesses proved that his father left the place some years before the date of the alleged bill of sale.

Defendants answer;

i. Supports the Moonsiff's decree;

ii. The evidence did not shew that his father left before the date of deed;

iii. 2d and 4th witnesses prove that Plaintiff's father said that he had received the purchase money the day before the execution of the deed;

iv. Plaintiff did file the rauzee before the Police.

"JUDGMENT."

3. On consideration of the record, the Subordinate Judge does not coincide with the Moonsiff in his finding.

4. Plaintiff's plea is, that he allowed Defendants to have the use of the site, on condition they gave it up when required. The Moonsiff does not believe the evidence of the witnesses brought by him, and states as reasons that 5th and 6th witnesses were not named at first, but he does not state that the reason was that Plaintiff's witnesses named at first, were dispensed with by him being bought over, and he therefore named these instead, their evidence proves that Plaintiff did allow Defendants to build on the above condition.

5. The Moonsiff lays great stress on a copy of a rauzee said to have been given by Plaintiff in 1849 before the Head of Police of Ralee talook, which shews that a part of the site belongs to 6th Defendant, in that complaint 7th Defendant in this suit was also a Defendant, and 5th Defendant prosecutor. The rauzee is only marked and is altogether a most suspicious document, and Plaintiff denies all knowledge of it, and says it was collusively got up by the Defendants.

6. The 3d reason the Moonsiff gives for deciding in favour of Defendants is that they have proved their plea that 6th Defendant bought the site from Plaintiff's father in 1836, in support of which, they produce sale deed, said to have been given by him. The Moonsiff considers this sale deed proved.

7. In the first place the deed is itself very suspicious looking, the *leaf* is *old*, but the writing undeniably *new*. Plaintiff's father is said to have marked it, and the witnesses to it, are the very same persons who witnessed a sale deed given by 3d witness for Plaintiff to 1st Defendant in August 1850 about 14 years later, which is utterly incredible. The Moonsiff has moreover not examined the writer of the document, and was therefore wrong in admitting it as proved; even if the writer did swear to the truth, the Subordinate Judge for the above reasons, would not believe its genuineness.

8. There is no proof whatever that 6th Defendant paid any thing to Plaintiff's father for the site, except the hearsay evidence of Defendant's 1st, 2d and 4th witnesses, and his statement that though he brought the site in 1836 for 30 rupees, that in 1847 he sold it to 1st Defendant for the same amount, is not credible.

9. The evidence of Plaintiff's witnesses, the 2d of whom is builder of the house for Defendant, proves that Plaintiff allowed 1st Defendant to build a house on his site no the conditions stated in the plaint, and the Moonsiff's reasoning for dismissing his suit, having been shewn to be wrong, a decree is given for Plaintiff for the site sued for, and the road thereto; costs of both suits to be borne by Defendants, and 1st Defendant is allowed one month to remove the house after execution of the decree is sued out.

ZILLAH SALEM.

PRESENT : H. M. S. GRÆME, ESQ., ACTING SUBORDINATE JUDGE.

THE 2D JANUARY 1857.

Appeal Suit No. 45 of 1853.

Appeal from the decision of W. E. Cochrane, Esq., Sub Collector of Salem, dated 21st July 1853.

Chinna Gounden *alias* . Chinnana Gounden, } Appellant.

Vakeel Appasawmy Pillay.

1. Paupany Ummaul, 2. Bolamareddy, } Respondents.

Vakeel Rungachair.

1. The Sub Collector decided that the Appellant should enter into puttah and moochilkah with the 2d Respondent for rupees 9-2-6 on the "Manratty poonjah" land and for rupees 21-19 on the "Calaram poonjah" plot in the Appellant's holding and that the arrears of rent amounting to rupees 13-5-9 should be paid by the Appellant to the 2d Respondent.

2. The Appellant states that there is some deficiency in the extent of the "Mamatty poonjah" and that the other plot "Calaram poonjah" had been converted from poonjah into garden at his own costs and labor, and therefore that he ought only pay the poonjah teervah rupees 4-5-9 instead of garden teervah rupees 21-19-0 decreed by the Sub Collector.

JUDGMENT.

3. The Appellant in this case admits having received a puttah for 1848 imposing garden teervah on "Calaram poonjah," but pleads that he did so on account of the threats of the moottadar. This excuse is not admissible, for if any compulsion had been used, a complaint could have been addressed to the Magistrate, as observed by the Sub Collector in his decision.

4. With regard to the deficiency said to exist in the extent of the other plot "Mamatty poonjah" the Curnum's deposition shews that the extent of this and the other land was found correct on measurement made by the Tahsildar. The Sub Collector's decision is accordingly confirmed with costs.

THE 2D JANUARY 1857.

Appeal Suit No. 29 of 1854.

Appeal from the decision of Soobbiah, District Moonsiff of Oossoor, dated 14th December 1853.

Veeramani, (Defendant,) Appellant,

Vakeel Appasawmy Pillay.

Ramayan, (Plaintiff,) Respondent.

Vakeel Syed Ghoolam Hoossain Saib.

1. The Plaintiff sues to recover principal and interest rupees 300 on a bond executed by the Defendant in favor of one Cooppee Chetty for rupees 180 on 3d September 1846, promising to repay the amount in two instalments, the 1st within 10 days and amounting to rupees 100, and the 2d in Palavunga year Shravana month (August 1847) amounting to rupees 80 and which Cooppee Chetty made over to him in Margashira Bahula Veroodecrootoo year (November 1851) for rupees 260, there being at that time due on the bond rupees 294-4-10. Plaintiff now only seeks the principal rupees 180 and interest rupees 124-0-4, in all rupees 304-0-4, but dismisses the rupees 4-0-4.

2. The Defendant denies the truth of the entire plaint and declares that her brother-in-law Sathanapututee Gounden, Cooppee Chetty and others have instituted this suit against her from motives of enmity.

3. The Moonsiff observed that the execution of the bond by Defendant and consent to meet the demand made by the Plaintiff is proved by the latter's witnesses ; that copy of a letter addressed by the Defendants to the Oossoor Tahsildar shews that she required at his hands a stamp paper for the purpose of executing a bond in favor of Cooppee Chetty for rupees 180 ; that the facts spoken to by Defendants' witnesses do not aid her cause ; he therefore decreed in favor of the Plaintiff awarding him rupees 300 and interest until date of collection and costs of suit.

4. The Defendant appealed against this decision urging that Plaintiff's witnesses state that the bond was given for a matter concerning the contract of the village, whereas the bond states that it was given for ready money ; that her having affixed her signature to the bond is not proved by Plaintiff's witnesses ; that she never wrote to the Tahsildar for the stamp paper.

5. The Respondent (Plaintiff) answers saying that Defendant wrote the bond for some money due to Cooppee Chetty on account of the village ; that it does not appear in the document that cash was received.

JUDGMENT.

6. The Plaintiff's witnesses fail to prove the fact of the Defendant's signature being attached to the bond, and the date of the bond only corresponds with the date of the Tahsildar's receipt of the alleged application from the Defendant for the stamp paper whereon to engross it, she as stated by Plaintiff's witnesses being absent, the reading of the bond also certainly leads one to the conclusion that cash was advanced at the time of its execution instead of its being a document referring to a passed obligation as stated by the Plaintiff's witnesses.

7. The Acting Subordinate Judge for these reasons cannot concur with the Moonsiff and therefore resolves to disallow Plaintiff's claim, charging him with all costs of suit.

8. Vide extract from the proceedings of the Sudr Udalut under date the 15th October 1856.

REVISED JUDGMENT.

9. On a review of the proceedings in this case it appears that the bond sued on is genuine. The 5th witness for Plaintiff asserts that he and one Vencataramanien not examined were present when the Defendant signed the bond in question and that they attested it.

10. The 1st and 2d witnesses state that the bond was written at Oossoor by desire of Dawagu, the brother and agent of the Defendant; that the Defendant's said brother took it to the Defendant who was at Athymogam and obtained her signature and the attestation of the 5th witness and one Vencataramanien, not examined; that on ascertaning this fact from them they (1st and 2d witnesses) and certain others attested the document in the absence of the Defendant, she being a woman of rank.

11. The 2d witness further declares the signature to the bond to be that of the Defendant and her admission of the debt and promise to repay it is also proved in evidence. The bond does not shew that cash was advanced at the time of its execution, but a reference to a passed obligation is mentioned in it, as deposed to by Plaintiff's witnesses; for these and other reasons assigned by the Moonsiff, the present Acting Subordinate Judge confirms the Moonsiff's decision with costs incurred in the appeal and special appeal causes to be paid by the Defendant.

THE 2D JANUARY 1857.

Appeal Suit No. 80 of 1854.

Appeal from the decision of Cooppa Row, District Moonsiff of Salem, dated 20th May 1854.

1. Ramy Chetty,
2. Ellapa Chetty, } (Plaintiffs,) Appellants.

1. Curpee,
2. Lutchooma Gounden,
3. Coopanun, son of the 2d Defendant, } (Defendants,) Respondents.

Vakeel Syed Kauderoossen Saib for the 1st Respondent.

1. The Plaintiffs sued on a karar to recover a plot of ground measuring 15 cubits east to west, by 15 south to north valued at rupees 25 and to obtain a verdict directing the removal by the 1st Defendant of the thatched building erected thereon valued at rupees 4-0-0.

2. It is set forth in the plaint that the disputed ground and another were purchased by Plaintiffs' mother Kistnamaul for 10 rupees from 2d Defendant on the 25th Chittara of Munmada

(May 1835); that Plaintiffs' mother having died about 12 years previous to 1852, their grandmother Naugomaul, under whose protection they had remained after their mother's death, allowed the 1st Defendant's sister Selumbee to occupy one of the grounds on the condition of restoring it on demand, as shewn by the document executed by her on the 15th Thy of Soobacrith (26th January 1843); that the aforesaid Selumbee died about 6 years prior to 1852 and the 1st Defendant having sold the ground to the other Defendant instead of conforming to the above condition, this action has been brought for the recovery of the said ground.

3. The 2d Defendant denies the sale of the grounds to Plaintiffs' mother and proceeds to state that he sold the ground in dispute to 1st Defendant's sister Selumbee for 5 rupees 25 years prior to 1852, but the deed of sale executed on that occasion was consumed by fire about 8 years prior to 1852 with the building erected on the ground; that Selumbee died 15 years prior to 1852, and it is improbable that she could have executed a bond to Plaintiffs' grandmother in Soobacrith (1843); that the ground in dispute has since been purchased by the 3d Defendant for 30 rupees from the 1st, who inherited it from her sister Selumbee, when the next door neighbour Arnachelassary endeavoured to buy it, but was not successful. Chagrined at this, he caused the Plaintiffs, who are his servants, to bring this suit in order to usurp the property; that the other plot of ground alluded to in the plaint was lent by him (2d Defendant) to one Sennakasavien, who kept the Plaintiff's mother as his concubine.

4. The other Defendants agree in the answer of the 2d.

5. The Plaintiffs represent by a supplemental petition that the deed of sale alluded to in their plaint is dated 29th Chittray and not 25th.

6. The Moonsiff non-suited the Plaintiffs with costs on the ground that it appears in evidence that Plaintiffs had no possession of the property claimed for about 12 years from 15th Thy of Soobacrith (26th January 1843); that Selumbee and the 1st Defendant had possession of it for 30 years and that the Plaintiff's claim appears to have been brought from motives of enmity.

7. From this decision the Plaintiffs appeal urging that their claim is satisfactorily proved in evidence; that the 2d Defendant is an illiterate person and has affixed his marks to several documents executed by him, but has since learnt to write his name; that the 11th witness Arnachella Assary for Plaintiffs produced a deed of mortgage executed by 2d Defendant, in which the boundary of the land mentioned is shewn to the east of Plaintiff's house; that this is sufficient to refute the 2d Defendant's plea, that the other plot of ground alluded to in the plaint has been merely

lent. The Plaintiffs conclude by saying that the deed of sale was obtained on two different plots of grounds, one of which is under litigation, whilst the other ground is in Plaintiff's possession.

8. The Defendants in their answer uphold the justness of the original decision.

JUDGMENT.

9. The karar on which the Plaintiffs ground their claim admits the enjoyment of the disputed property by Selumbee in Soobacrith (1843); this document is proved by 3 of Plaintiffs' witnesses. The deed of sale executed in favor of Plaintiffs' mother in 1835 is also proved by three witnesses; and the demand of the restoration of the ground from 1st Defendant by Plaintiffs' grandmother is also established by two witnesses.

10. The assertion made by Defendants in regard to the destruction of the bond affords much room for suspicion. The bond produced by Aroonachala Assary, Plaintiffs' 11th witness, shews that the house which was mortgaged to him stood to the east of Plaintiffs' house, and it is hardly credible, however lax that individual's morals might be, that he would risk the penalties of forgery for so small an amount.

11. Under these circumstances the Moonsiff's decree is reversed, charging Defendants with all costs.

12. From this decision the 1st Defendant preferred a special appeal and the Court of Sudr Udalut remanded the case on the ground that it had not met with due consideration, inasmuch as the late Acting Subordinate Judge's decree which reverses the Moonsiff's decision in favor of the Defendant, does not specify what is awarded to the Plaintiff.

REVISED JUDGMENT.

13. The Acting Subordinate Judge has given his careful attention to the records in this suit, and arrives at the same conclusion as the late Acting Subordinate Judge. The evidence adduced on each side supports in a measure the respective statements of Plaintiffs and Defendants, but the weight appears to preponderate on the side of the Plaintiffs from the consideration that must be given to the two documents exhibited by them, viz. the karar, and deed of sale both attested by witnesses. The 2d Defendant, who states that he usually signs his name to every document he executes and that his mark has been forged to the deed, has not signed his *name* to the notice of action issued in the original suit. The Plaintiffs occupation of one of the two plots of the ground purchased under the deed, on which the other ground is

claimed, is not only not denied by the Defendants, but is also proved in evidence.

14. For these reasons and others assigned by the late Acting Subordinate Judge the Moonsiff's decree is reversed and the ground claimed is adjudged to the Plaintiffs with costs in the appeal and in the special appeal suits.

THE 2D JANUARY 1857.

Appeal Suit No. 42 of 1855.

Appeal from the decision of Ponnoosawmy Pillay, District Moonsiff of Tripatore, dated 7th February 1855.

1. Letchma Gounden,
2. Motta Gounden,
3. Ramaswamy,
4. Chinnia Gounden,

(Plaintiffs,) Appellants.

Vakeel Conairy Pundit.

1. Roockoomonee,
2. Chinnacoollen, husband of 1st Defendant,
3. Gooroonada Chetty,

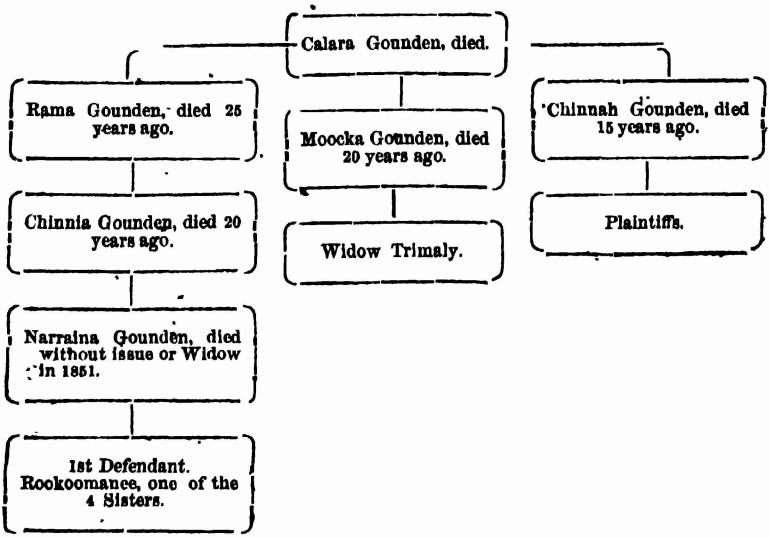
(Defendants,) Respondents.

Vakeel Appasawmy Pillay.

1. This is an appeal from the Moonsiff's decision non-suiting the Plaintiffs with costs.

2. The original suit was instituted for the recovery of property, real and personal, worth rupees 650-0-0.

3. The genealogy is as follows ;



4. It is set forth in the plaint that the property claimed was

acquired by Plaintiffs' grandfather ; that the Plaintiffs' father and their uncles divided their family property 30 years ago without the execution of a partition deed ; that Narrainagounden, in whose name the puttah for the lands claimed stands and who was Plaintiff's cousins son, died on the 22d Cartiky of Virodeecrith (1851) leaving no widow, or male issue and that his sister, the 1st Defendant, in concert with the other Defendants, has taken possession of the property now claimed ; that Plaintiffs are entitled to inherit the same and that none of Narrainagounden's married sisters, four in all inclusive of the 1st Defendant, have any title whatever to the property.

5. The 1st Defendant states that Ramagounden was the 1st wife's son, and Moockagounden and Chinnagounden, the 2d wife's sons of Calaragounden ; that division of property had taken place between them 60 years ago ; that the putcut lands and other articles which form part of the property in dispute had been since acquired by her late father Chinniagounden ; that this individual had given her at the time of her marriage which was celebrated in Auvany of Karah (August 1831) a moiety of the property possessed by him ; that inclusive of this moiety the entire property was subsequently given to her and her husband by her brother Narrainagounden at his death-bed ; that she performed his funeral rites ; that according to the provisions of the Hindoo Law a daughter is entitled to inherit the property of her late father on the demise of his son without male issue in the case of the fathers having been a divided family.

6. The 2d Defendant concurs in the answer of the 1st Defendant.

7. The 3d Defendant states that he has been unnecessarily included as such to prevent his giving evidence in favor of the other Defendants.

8. The Moonsiff finding that the Plaintiffs have failed to prove their claim and that it is proved in evidence adduced by the 1st and 2d Defendants that part of the property in dispute was given to 1st Defendant by her late father as " streedhanum" at the celebration of her marriage and the remaining part was given to her by her brother at his death-bed, dismissed the suit with costs.

9. From this decision the Plaintiffs appealed urging that if a moiety of the property in dispute had been giving to 1st Defendant as " streedhanum," a document would have been executed to that effect, or the puttah for the real property which stands still in the name of Narrainagounden would have been transfered to her name ; that if the other moiety of the property in dispute had been given to 1st Defendant by her brother Narrainagounden

at his death-bed as alleged, a will would have been obtained regarding it; that 1st Defendant was not the proper person to perform the funeral rites to Narrainagounden; that the Moonsiff has omitted to obtain the opinion of the Hindoo Law officer which was material for the decision of this suit as required by Section 62, Regulation VI of 1816 which measure the Plaintiffs request may be now adopted by the Appellate Court.

10. The 1st and 3d Defendants put in their answers to the appeal.

11. The 1st Defendant further requests that oral pleadings may be heard.

JUDGMENT.

12. In this case the gift of a moiety of the property by Narrainagounden's father to his daughter, the 1st Defendant at the celebration of her nuptials, appears to be valid and unquestionable, for if questionable Narrainagounden, the next heir was the party to start any objections, but that Narrainagounden consented to the gift made by his late father is evident from the fact of his having, on his death-bed, given to 1st Defendant the other moiety inherited by himself.

13. The next point requiring decision is whether the bestowal by the unmarried childless Narrainagounden of the moiety inherited by himself upon his sister, the 1st Defendant, is valid or not. On reference to the Hindoo Law and the decision of the Sudr Morley's Digest 70, 157, it appears that the Defendant cannot inherit the property of her brother. The Plaintiffs, as cousins of Narrainagounden's father, are consequently the proper heirs and the gift made by Narrainagounden at his death must be set aside.

14. The Acting Subordinate Judge therefore partly reverses the Moonsiff's decision and adjudges to Plaintiffs (Appellants) a moiety of the land and house claimed together with proportionate costs on the amount decreed. As there is no satisfactory proof regarding the moveable property the claim is disallowed.

THE 2D JANUARY 1857.

Appeal Suit No. 54 of 1855.

Appeal from the decision of Cooppa Row, District Moonsiff of Yadapaudy, dated 24th March 1855.

1. Attapa Gounden, } (1st and 2d Defendants,) Appellants.
2. Nachy Gounden, }

Vakeel Cooppier.

1. Kylasa Gounden, } (Plaintiff) } Respondents.
2. Pongaly Gounden, } 1st Defendant, }

Vakeel Rungachaur for 1st Respondent.

1. The original suit was instituted for the recovery of Tennamarattoo nunjah land producing annually rupees 50 with a well worth rupees 14 under a deed of sale executed by the 1st and 2d Defendants on the 26th Pangoony of Soumiah (6th April 1850) for rupees 20.

2. It is set forth that this land and Ichyady land are registered in the names of the 1st, 2d and 3d Defendants jointly, but the land in dispute was held and enjoyed by the 1st and 2d Defendants as their share and Ichyady land, by the 3d Defendant as his share in the division that took place between them; that one Sengoda Gounden bought the Ichyady land from the 3d Defendant and obtained a decree in his favor for it in Suit No. 78 of 1850 on the file of the same Moonsiff.

3. The 1st and 2d Defendants admit the truth of the Plaintiff's claim.

4. The 3d Defendant allowed the suit to go exparte.

5. The 4th and 5th Defendants state that a moiety of the contested land had fallen to the 3d Defendant's share; that 3d Defendant sold the said moiety to them for rupees 15 under a deed of sale bearing date 3d Thye of Soumiah (14th January 1850) and delivered possession of it to them; that they paid cundayem and obtained a receipt for the same; that 3d Defendant gave a rauzeenamah to the Tahsildar regarding the transfer of the puttah to their names, but consequent on the objections made by the 1st and 2d Defendants in a petition to the address of the Sub Collector, the puttah was not so transferred; that the deed sued

on is a fabrication as no allusion to it was made in the 1st and 2d Defendants' petition to the Sub Collector.

6. The Moonsiff gave judgment for Plaintiff finding that the deed sued on was admitted by the 1st and 2d Defendants and was not objected to by the 3d Defendant; that the plaint was proved in evidence and that the 4th and 5th Defendants failed to adduce proof in support of their plea.

7. From this decision the 4th and 5th Defendants appealed and the case was remanded for reinvestigation.

8. The Moonsiff in his revised decision confirmed the first decision on the ground that the deed sued on was proved by the evidence of the Plaintiff's 5th and 6th witnesses and also by the 5th witness for the 4th and 5th Defendants; that 3d Defendant in a motion given by him admitted the truth of the Plaintiff's claim and denied having executed a deed of sale in favor of the 4th and 5th Defendants, adding that he in conjunction with the 1st and 2d Defendants gave a moochilkah to the Tahsildar and caused the puttah to be made out in the Plaintiff's name for the land claimed. The Moonsiff further remarked that the evidence of the witnesses for the 4th and 5th Defendants is contradictory.

9. From this decision the 4th and 5th Defendants preferred this appeal urging that the 3d Defendant in his answer given in Appeal Suit No. 54 of 1851, which was remanded for reinvestigation, admitted the execution of the deed of sale No. 32 in their favor, as well as the fact of the land having been delivered over by him to their possession and of his having given a jody rauzeenamah to the Cirkar; that the deed of sale in their favor and their possession are proved in evidence.

10. The Plaintiff gave in an answer to the appeal stating that the 3d Defendant had no right to sell the contested land inasmuch as it did not fall to his share; that certain other land which fell to his share was made over to a third party as per decree in Suit No. 78 which is filed as document No. 56.

JUDGMENT.

11. The chief and only point required for the decision of this suit, is whether the land in dispute is the exclusive share of the 1st and 2d Defendants as stated by the Plaintiff, or whether a portion of it was held by the 3d Defendant as his share as asserted by the 4th and 5th Defendants. The decree in Suit No. 78, a copy of which is filed as document No. 56, shews that Ichyady land had fallen to the share of the 3d Defendant, from which it is apparent that the 3d Defendant had received his share and had no claim on any portion of the land now in dispute.

12. The Plaintiff's document No. 61 is a Padivoosody rauzeenamah executed by the first 3 Defendants to have the puttah for the contested land transferred to Plaintiff's name. Documents Nos. 44 and 74 are puttahs given to Plaintiff for the land in dispute for fuslies 1261 and 63.

13. The Moonsiff's decision is therefore confirmed with costs.

14. The proper course for the 4th and 5th Defendants to adopt is to sue the 3d Defendant for the recovery of the purchase money they paid to him.

THE 2D JANUARY 1857.

Appeal Suit No. 63 of 1855.

Appeal from the decision of Ghoolam Hoossain Sahib, Acting District Moonsiff of Namgerrypett, dated 20th March 1855.

1. Auroomoogapondarum, } (Plaintiffs,) Appellants.
2. Canagon, }

Vakeel Rungachaur.

1. Soobamaul, } (Defendants,) Respondents.
2. Mackempermapilly, }

Vakeel Appasamy Pillay.

1. The original suit was instituted for the recovery of rupees 87-4-0 including interest equal to the principal due on a bond executed on the 14th Auny of Croody (1844) by Odiar Appoopilly, the late husband of the 1st, and adopted father of the 2d Defendants for rupees 43-10-0 promising repayment at the time of the harvest of the cholum and caur produce. It is alleged that the said Appoopilly died in 1851 without discharging the debt and the Defendants, who are his heirs, procrastinate to pay the debt. Interest is also claimed though not stipulated for in the bond.

2. The 1st Defendant denies the plaint adding that if Plaintiff's claim be true, he would not have allowed it to lie dormant for the past 10 years; that Plaintiff is not in such circumstances as to enable him to lend money; that this suit has been brought in collusion with the 2d Defendant, who wished to appropriate her (1st Defendant's) property and that 2d Defendant is not her adopted son.

3. The 2d Defendant allowed the suit to go by default.

4. The Moonsiff dismissed the Plaintiff's claim with costs. He admits that the bond sued on is proved by the evidence of 3 witnesses and that two witnesses for Plaintiffs speak to having severally been witnesses to the Plaintiff's demand and to 1st Defendant's promise to pay, but considers that the Plaintiff's position in life as proved in evidence (viz. that 1st Plaintiff is a servant of the pagodah belonging to the 1st Defendant's late husband and that the 2d Plaintiff is a village servant) and the delay on the part of the Plaintiffs in not having adopted measures for the recovery of the amount of the bond during the lifetime of the 1st Defendant's late husband, render the Plaintiffs' claim suspicious.

5. From this decision the Plaintiffs appeal urging that the Moonsiff did not deny their claim being established ; that they obtained a decree in their favor in Appeal Suit No. of for money lent by them to one Vencataramanien, the village Moonsiff of Ahtoor, in which suit the same Moonsiff pleaded for them as their Vakeel ; that from this it is probable that they were not too poor to lend money also to 1st Defendant's husband.

6. No answer was given in the appeal.

JUDGMENT.

7. It is shewn by the evidence that the bond sued on was duly executed and also that the 1st Defendant promised to repay the loan to the Plaintiffs. It does not appear to the Acting Subordinate Judge that the mere fact of the Plaintiffs not having brought their claim for the recovery of the money for 10 years is sufficient of itself to render the former evidence null and void.

8. The Acting Subordinate Judge considering therefore that the Plaintiffs have made good their case, resolves to reverse the Moonsiff's decision, but as Plaintiffs did not sue immediately after the expiration of the term fixed in the bond, and as no provision has been made it in for interest, their claim for it is disallowed, and only the principal claimed is decreed to them with proportionate costs on that sum to be paid by the 1st Defendant, the 2d Defendant's adoption not having been proved.

THE 2D JANUARY 1857.

Appeal Suit No. 69 of 1855.

Appeal from the decision of Vencataramaniah, District Moonsiff of Vamgherrypett, dated 20th April 1855.

Auny Chetty, (Plaintiff,) Appellant,

Vakeel Rungachaur.

1. Baul Amaul,
2. Tolasy Amaul,
3. Vencatarama Chetty,
4. Vencatarama Chetty,
5. Pillay Gounden Chetty,
6. Moottoogoppaul Chetty,

(Defendants,) Respondents.

1. This is an appeal from the Moonsiff's decision dismissing the Plaintiff's claim for rupees 800 with costs.

2. It was set forth in the plaint that Plaintiff, one Samboo Chetty, the late husband of the 1st Defendant and Chinnatumby Chetty were brothers and lived jointly; that they (3 brothers) opened separate shops in 3 different villages and carried on trades; that they however continued to carry on the pecuniary dealings in the name of the Plaintiff's elder brother; that Chinnatumby Chetty, who was the eldest died in Plavungah (1841) leaving no issue; that Samboo Chetty died in Thye of Virodycrith (January 1851) leaving no issue and Plaintiff performed his funeral rights; that his widow, the 1st Defendant, appropriated the jewels and other articles left by the deceased; that besides this the said 1st Defendant, as well as her sister, the 2d had collected certain outstanding balances and secured the entire property under the custody of the 3d and 4th; and that the 5th and 6th are aiding the 1st Defendant. Plaintiff therefore sued to recover the value of the articles amounting to rupees 565 and rupees 235, the outstanding balances collected, making in all rupees 800.

3. In her answer the 1st Defendant denies the truth of the plaint and states that her husband and his two brothers had divided their ancestral property 15 years ago and lived separately; that her husband was unable to gain his livelihood and was consequently employed by the 2d Defendant in her shop on a monthly salary of 2 rupees; that on his death in Virodycrith (1851) she lived with the 2d Defendant for some time, but has since separated from her; that she had let the shop possessed by her late husband to the 3d

and 4th Defendants and continues to gain her livelihood from the monthly rent of a rupee; that in Soumiah (1849) Plaintiff had borrowed of her husband rupees 10 on a bond, for the recovery of which she has instituted a suit in No. 640 on the file of the Salem District Moonsiff.

4. 4th Defendant states that he and 3d Defendant rented the shop from the 1st Defendant and continue to give her monthly a rupee.

5. The 6th Defendant's answer is in support of the plaint. He states that the other Defendants are amenable.

6. The 2d, 3d and 5th Defendants suffered the suit to go by default.

7. The Moonsiff dismissed the claim with costs to be borne by the respective parties. He observes that there is no proof that Plaintiff and 1st Defendant's husband lived jointly without partition of property, but it is proved that they lived separately and carried on merchandise; that 6th Defendant is Plaintiff's nephew, and is in collusion with him; that the Hindoo law provides that the property of a person dying without issue should go to his widows—See "Vivadadarpanum" page 165, 24th line.

8. Dissatisfied with this decision the Plaintiff appealed urging that it is proved by the evidence of the 10th and 11th witnesses on his side that he and 1st Defendant's husband lived together without dividing the property, and that 1st Defendant is in possession of the property claimed. It is proved in evidence on both sides that Plaintiff performed funeral rights to 1st Defendant's late husband. No document has been produced to prove that partition of property had taken place; that his claim had been dismissed on the text of the law which is applicable only to *divided family*. He quotes "Vigianaiswerem," "Vygnavalkya Smrithy," "Vivadadarpanum" page 153 latter part and page 154 first part as providing that the property of a person who died without issue and *who was one of an undivided* family, should go to his brother. He also quotes the decrees in Original Suits Nos. 86 of 1852 and No. 3 of 1853 of this Court's file and No. 1 of 1852 on the file of the Civil Court as favourable to his case; that it is proved that 1st Defendant lives in a house which is common property.

9. The Respondent was declared exparte.

JUDGMENT.

10. In this case it is not clearly shewn in evidence that Plaintiff and 1st Defendant's late husband lived as undivided bro-

thers, or that 1st Defendant is now in possession of the articles claimed, or that she had collected the outstanding balances. The Plaintiff's 2d witness states that 1st Defendant gains her livelihood by husking paddy. The Plaintiff admits that he and the 1st Defendant's husband lived for a long time apart in different villages and carried on trade separately. For these and other reasons given by the Moonsiff the Acting Subordinate Judge confirms the Moonsiff's decision with costs.

THE 2D JANUARY 1857.

Appeal Suit No. 71 of 1855.

Appeal from the decision of Sevagany Pillay, District Moonsiff of Namcul, dated 20th April 1855.

1. Narasimma Chetty,
2. Ardanauiee Chetty, } (Defendants,) Appellants.
3. Kistna Chetty,

Vakeel Appasawmy Pillay.

Thoppaly *alias* Namagherry, (Plaintiff,) Respondent.

Vakeel Rungachaur.

1. This suit was instituted for the recovery of rupees 295-3 including interest on a verbal agreement.

2. Plaint sets forth that, on the 4th Margaly of Paredabee, (1852) the Defendants having told the Plaintiff that the 1st Defendant was in very distressed circumstances, borrowed of her rupees 325 promising to repay the same within 3 days and that in the event of their failing to act up to their promise they agreed to pay interest on the said sum and to execute to her (Plaintiff) a bond on stampt paper to that effect, but omitted to do so; that on the 26th Tye of Paredabee they only paid Plaintiff rupees 90; that on requiring the Defendants either to discharge the balance or to execute a document, they put her off with promises. Hence this suit for the recovery of the

	RS.	AS.	P.
Balance rupees	279	10	0
Interest	15	9	0
Total..	295	3	0

3. Plaintiff filed a motion claiming interest from the date of plaint.

4. The 1st and 2d Defendants filed a joint answer denying the truth of the plaint and asserting that had the plaint been correct Plaintiff would have obtained either a document on stampt paper or an account; that Plaintiff is not in a position to lend money, nor is she the senior member of her family; that 1st Defendant is a respectable person and has held the situation of shroff and has had dealings with moottahdars; that at the time in which it was alleged that money was lent the 2d Defendant was absent at Caroor in the Coimbatore District and certain documents were exchanged at the time between himself (2d Defendant) and some merchants of that place; that Plaintiff has lived with the 3d Defendant as his concubine for a long time time past; that Plaintiff in order to defraud the Defendants of certain property consisting of gold and silver ornaments &c. valued at rupees 430 which were entrusted to her by the 3d Defendant, and which she, her sisters and the 3d Defendant promised to restore, gained over the 3d Defendant and after creating enmity between them (1st and 2d Defendants) and the 3d Defendant, she brought forward this suit expecting the paramours of her sisters to give evidence on her behalf, hoping thereby to obtain a decree in her favour.

5. The 3d Defendant filed an answer in which he denies that he owes any thing to Plaintiff and asserts that he lived with the Plaintiff as her paramour. He further supports the answer filed by the 1st and 2d Defendants.

6. The Plaintiff and Defendants were required to prove the substance of their plaint and their answers and to produce documents in support of their respective pleas.

7. Plaintiff also filed a miscellaneous petition repeating the plaint adding that no property whatever was entrusted to her charge by the 3d Defendant.

8. The 1st Defendant gave a deposition stating that money could be lent on trust without obtaining documents and the 3d Defendant also gave a deposition to the same effect.

9. 10 witnesses were examined for Plaintiff and 3 documents filed by her; 2 witnesses were also examined on the Court's behalf.

10. 12 witnesses were examined for the Defendants who filed 3 documents.

11. On considering the whole evidence in this suit both oral and documentary, the Moonsiff observed that although some

of the witnesses for the Defendants support their statements as to the absence of the 2d Defendant at Caroor, yet no credit can be attached to them, but the evidence for Plaintiff appears to be bonâ fide; that the fact of Defendants having borrowed the sum alluded to in the plaint the repayment of rupees 90 and the promise to pay the balance have been fully proved. For these reasons the Moonsiff awarded to Plaintiff the amount claimed, rupees 295-3, with subsequent interest taxing the Defendants with costs.

12. From the above decision the Defendants appeal reiterating their original answer adding that having no other means of livelihood, she (Plaintiff) was kept by the 3d Defendant as a concubine; consequently that the 1st and 2d Defendants, who are brothers would not to their disgrace have borrowed money from her; that Plaintiff could not have been in a situation to lend such a large amount; that Plaintiff's witnesses are not respectable persons; that Plaintiff gave a deposition stating that she lent the money on mortgage of her ornaments, but this circumstance was omitted in her plaint; Plaintiff being a dancing girl and a prosititute they (Appellants) declined to settle the matter by oath. The Appellants therefore pray that the original decree may be annulled.

13. In her answer Plaintiff (Respondent) states that although a dancing girl, yet that she is in opulent circumstances and sufficiently wealthy to lend money; that the Appellants admitted the debt before Vencataramiah, the present Moonsiff of Salem while in Namcul and also before the present Moonsiff of Namcul; consequently if these officers be questioned, the correctness of her statement may be ascertained. Respondent therefore prays that the original decree may be confirmed.

14. The Court directs the Respondent to give in a list of witnesses citing the Moonsiff Vencataramiah as one, if she thinks necessary.

JUDGMENT.

15. On a perusal of the records in this case, the Acting Subordinate Judge finds that the 3d Defendant admits in a deposition No. 38 given by him that no document was obtained from Plaintiff regarding the property worth rupees 400 or 500 alluded to in his answer as having been entrusted to her (the Plaintiff's) charge for security, but that he did so in confidence, as she cohabited with him and that the Plaintiff could in the same confidence, which mutually existed between them, have lent him and other Defendants, who are his brothers, money without obtaining any bond.

16. The document *A* produced by Plaintiff is a private book kept by the Plaintiff and contains an entry of the money lent to the Defendants and also of the repayment by them of 90 rupees.

17. The document *B* produced by Plaintiff is an authenticated copy of an order from the Collector to the Tahsildar. This document shews that the Collector had reason to presume that a certain fraud had been committed by the 1st Defendant, the talook shroff; that on this being discovered the money was suddenly made good, and that he (the Collector) suspended the shroff for 6 months.

18. The document *C* is copy of a complaint against the 1st Defendant dated 21st September 1852 accusing him of having previously misappropriated from the talook Treasury about 300 rupees which he had subsequently made good by borrowing money from others.

19. From the above two documents *B* and *C* and other evidence adduced by the Plaintiff, it appears that Defendants had on a sudden emergency asked the Plaintiff for money and obtained from her the amount claimed. The alibi pleaded by the 2d Defendant is of little weight, as the distance is short between Caroor (where he states he was) and Namcul.

20. For the foregoing reasons and others assigned by the Moonsiff the Acting Subordinate Judge confirms the Lower Court's decision with costs.

THE 2D JANUARY 1857.

Appeal Suit No. 74 of 1855.

Appeal from the decision of Sevagany Pillay, District Moonsiff of Namcul, dated 27th April 1855.

Permaul, (1st Defendant,) Appellant.

Vakeel Coopien.

1. Ramen,
2. Palanyandy,
3. Custoory,
4. Vadamaly,
5. Cavairy,

} (Plaintiffs,) Respondents.

Vakeel Rungachaur.

1. This is an appeal from the Moonsiff's decision awarding to Plaintiffs (Respondents) a ground worth rupees 3, poonjah land producing rupees 11 and rupees 18 value of certain articles.

2. The Plaintiffs state that one Tauden, the father of the first four Plaintiffs, the 5th Plaintiff and the Defendant's father Rungun were brothers ; that partition of family property had taken place between them 15 years ago when ⅜th bullah of poonjah land and 27 rupees worth of articles were given from the common property to one Vellachy, the mother of the 5th Plaintiff and grandmother of the other Plaintiffs and Defendants on condition that they were to be eventually divided between them all after the death of the said Vellachy ; that a month afterwards the father of the first four Plaintiffs died and the said Plaintiffs were under the protection of the Defendant's father ; that the said Vellachy died 10 years ago ; that the Defendants who got possession of the property left by the said Vellachy decline to give them ⅔ds share of them, as well as ground which fell to the share of the first four Plaintiffs in the division of property already made. Hence this suit.

3. The 1st Defendant answered that the plaint is not right ; that division of property had taken place 30 years ago between the 3 brothers alluded to in the plaint ; that Vellachy died 25 years ago and she possessed no articles of any value and that the lands claimed had fallen to the share of his father ; that the first four Plaintiffs did not live with him jointly until 1849 as stated in the plaint.

4. The 2d Defendant allowed the suit to go by default.

5. The Moonsiff observes that the 1st, 2d and 5th Plaintiffs challenged the 1st Defendant to settle the dispute by oath, but the 1st Defendant declined ; that although the only two witnesses examined for the Defendant speak in support of the answer, yet no credence could be given to their testimony as they are residents of another village ; that the said witnesses however state that certain articles were given to Vellachy to be kept by her during life at the division ; that the Plaintiffs' claim has been satisfactorily proved by the evidence of 7 witnesses who are residents of the same village and of the same caste, one of whom is the village Moonsiff, one the Curnum, two of the rest, the heads of the village ; that though they differ slightly with regard to the extent of the ground and as to the value of the articles and of the produce of the land claimed, it is of no importance ; that the Plaintiffs' demand and the Defendant's promise are also proved in evidence. He therefore gave judgment in Plaintiffs' favor.

6. Dissatisfied with this decision the 1st Defendant appeals urging that if Plaintiffs had obtained Defendants' promise they would have received a document on the subject. Produces 6 receipts to disprove the Plaintiffs' plea that they lived jointly with him.

7. The Plaintiffs gave an answer upholding the justness of the Moonsiff's decision.

JUDGMENT.

8. The point required for decision in this case is whether the property claimed was set apart and given to Vellachy at the division. This is proved by the evidence of 7 witnesses. The Defendants' witnesses, also, in some measure support this point. The receipts produced by the Appellant do not prove any thing in his favour. They merely shew the kists paid by Defendants' father. The Acting Subordinate Judge therefore confirms the Moonsiff's decision with costs.

THE 2D JANUARY 1857.

Appeal Suit No. 75 of 1855

Appeal from the decision of Ponnoosawmy Pillay, District Moonsiff of Tripatoor, dated 23d March 1855.

1. Chinnacooppee Chetty, } (Defendants,) Appellants.
2. Bada Saib, }

Vakeel Coopien.

Narasimma Charry, (Plaintiff,) Respondent.

Vakeel Conairy Pundit.

1. The original suit was instituted for the recovery of rupees 58-8-7 including interest on a letter of correspondence and a receipt.

2. The Plaintiff states that on the 27th Auny of Sadaranah (9th July 1850) the 1st Defendant sent him a letter through his servant, the 2d Defendant, requiring him (Plaintiff) to send him (1st Defendant) through the 2d Defendant, the sum of rupees 61-10-0 due with reference to the rauzeenamah filed in Suit No. 922 of 1846 on the file of the Kistnagherry Moonsiff; that Plaintiff accordingly paid the 2d Defendant on the security of the 3d Defendant rupees 47-8-0 and obtained a receipt on the 12th July 1850; that the 1st Defendant instead of deducting the money from the amount acknowledged in the rauzeenamah, caused a precept to be issued for the whole amount of the rauzeenamah. Hence this suit.

3. In his answer the 1st Defendant admits having sent to Plaintiff through the 2d Defendant the letter alluded to in the plaint, but states that Plaintiff had sent him only rupees 17-8-0

with a reply to the effect that this sum might be carried to the credit of Suit No. 767 of 1846 on the file of Kistnagherry Moonsiff; that the receipt alluded to in the plaint is a fabrication.

4. 2d Defendant concurs in the answer of the 1st.

5. 3d Defendant states that he witnessed the payment of the money and the execution of the receipt, but that he did not become security as stated in the plaint.

6. The Moonsiff gave judgment for Plaintiff finding that the document No. 59 filed by the 1st Defendant as a reply from the Plaintiff bearing no date, and that the sum therein alluded to appearing to have been carried to the credit of the amount due in another Suit No. 767, it cannot weaken the genuineness of the Plaintiff's documents *A* and *B* sued on which have reference to Suit No. 922; that 1st Defendant admits the document *A* which is a letter written by him to Plaintiff; that Plaintiff has paid according to that letter rupees 47-8-0 was satisfactorily proved by the evidence adduced by Plaintiff and admitted by the 3d Defendant, and the 1st Defendant did not deny having caused a precept to be issued for the collection of the whole amount of the rauzeenamah given in Suit No. 922.

7. The 1st and 2d Defendants appealed from the above decision urging that no allusion to the number of the suit was made in the 1st Defendant's letter to the Plaintiff, nor any instructions given directing the Plaintiff to obtain a receipt from his servant, the 2d Defendant; that that part of the letter which contains a direction to that effect has since been made by the Plaintiff as is apparent from the difference in the ink. There are no eye witnesses to the payment of the money.

JUDGMENT.

8. The letter from 1st Defendant to Plaintiff conveys a demand for money due for rauzeenamahs and an order to pay it to 2d Defendant, the servant of the first. There are no marks of subsequent alterations having been made apparent on the face of the letter. The whole appears to have been written at one time and in even lines, nor are there signs of any words having been interpolated. The Moonsiff's decision is therefore confirmed with costs in appeal.

THE 2D JANUARY 1857.

Appeal Suit No. 77 of 1855.

Appeal from the decision of Vencataramiah, District Moonsiff of Salem, dated 30th March 1855.

Emam Saib, (Plaintiff,) Appellant.

Moideen Saib, (Defendant,) Respondent.

1. The original suit was instituted for the recovery of 1½ unkanum of a pagodah valued at rupees 60 on a karar.

2. The Plaintiff states that the pagodah in question consisting of 3 unkanums is common property between him and Defendant, who is his brother; that he sued the Defendant in Suit No. 956 of 1846 on the file of the District Moonsiff of Salem for rupees 45, being the expense defrayed by him for the performance of the festival of the pagodah; that the Defendant had executed to him a karar on the 8th Margaly of Parabbavah (1846) agreeing to pay him (Plaintiff) annually rupees 5 for the performance of the festival; in default of payment he was to give up his right to the pagodah and poonjah in favor of the Plaintiff; that on this he, Plaintiff, has withdrawn the suit above alluded to. Hence this suit.

3. In his answer the Defendant denies the execution of the karar asserting that the property claimed is worth rupees 500; that he cannot be compelled to join the Plaintiff in the performance of the festival.

4. The Moonsiff states that both the execution of the karar and that Plaintiff continues to perform the festival are proved in evidence. It is also proved that Plaintiff said that Defendant did not pay the amount as agreed; that the Defendant's witnesses prove the property claimed to be worth rupees 250. The Moonsiff on a personal inspection estimates the property at rupees 100; that Plaintiff had admitted in a deposition given by him that the poonjah &c. in the pagodah are worth rupees 7; that they are common property between him and Defendant. The Moonsiff remarked that the poonjah &c. not being included in the plaint is contrary to the tenor of the Circular Order Sudr Udalut of the 28th January 1830; that the incorrectness in the estimation of the property claimed is repugnant to the provisions of Regulation XII of 1809, and that the stipulation in the karar to the effect "that Defendant was to forfeit his right to the property worth rupees 100 in the event of his failing to pay rupees 5 as gratuity,"

is in itself inconsistent with justice. He therefore dismissed the Plaintiff's claim with costs.

5. Dissatisfied with this decision the Plaintiff preferred this appeal urging that his claim is satisfactorily proved in evidence ; that the Moonsiff's estimation is not right ; that a personal inspection will satisfy the Court that the property in dispute is worth rupees 58 ; that the poonjah &c. belong to neither party, wherefore it was not included in his plaint.

6. No answer was given in the appeal.

JUDGMENT.

7. On a perusal of the records in this case the Acting Subordinate Judge is inclined fully to concur in the finding of the Moonsiff. The Plaintiff has stated in his deposition No. 38 given in the original trial that the property claimed is worth rupees 75, and that the poonjah &c. are common property between him and Defendant. His plea in the appeal is utterly at variance with his own statement.

8. The original decree is confirmed. Plaintiff to pay costs of appeal.

THE 2D JANUARY 1857.

Appeal Suit No. 78 of 1855.

Appeal from the decision of Vencataramiah, District Moonsiff of Salem, dated 30th March 1855.

Gopal Chetty having died since, his son Comarasamy Chetty, } (Plaintiff,) Appellant.

Vakeel Appasamy Pillay.

1. Woonnahmaly,
2. Pachy,
3. Hary Kistna Chetty, brother of the 2d, } (Defendants,) Respondents.

Vakeel Kauderoossen Saib for 2d and 3d Respondents.

1. This is an appeal from the Moonsiff's decision dismissing the Plaintiff's claim for certain land producing annually rupees 41 and produce thereof valued at rupees 23.

2. It is set forth in the plaint that certain land, in which that in dispute forms ⅓d share was held by one Ramaswamy Chetty, the late husband of the 1st and 2d Defendants; that on the death of the said Ramasamy Chetty his widows the 1st and 2d Defendants divided the property between them; that 1st Defendant sold to Plaintiff for rupees 75 the land sued for, which fell to her share and executed a deed of sale under date the 13th Cartiky of Virodycrith (November 1851) and transferred puttah to his name, but that the 1st Defendant has not delivered over possession; that he paid rupees 10-7-2 as cundayem on the land. Hence this suit.

3. In her answer the 1st Defendant admits the truth of the plaint but that as the land claimed is in possession of the 2d Defendant, she is not amenable to Plaintiff's claim; that the entire land alluded to in the plaint, as well as the ancestral debt amounting to 240 rupees, which was due to one Vyde Chetty were divided between her and 2d Defendant; that ⅓d of the land and ⅓d of the debt fell to her share and that she had discharged the debt.

4. In their answer the 2d and 3d Defendants state that 2d Defendant has a son aged 4 years, who is entitled to inherit the entire property left by the deceased father, of which the land claimed forms a part; that the sale of the land by 1st Defendant in favor of the Plaintiff is not tenable under the Hindoo law.

5. The Moonsiff states in his decision that it is proved in evidence that division of property had taken place between the 1st and 2d Defendants in Sadaranah (1850) and that 1st Defendant had sold her share to the Plaintiff, but considers both the division and sale made by deceased Ramasawmy Chetty's widow, the 1st Defendant, are untenable, because the deceased has a son, who is entitled to inherit it. The Moonsiff therefore dismissed the Plaintiff's claim with costs leaving the Plaintiff to sue the 1st Defendant for the purchase money he paid.

6. Dissatisfied with the above decision the Plaintiff appeals urging that the land claimed, which fell to the share of the 1st Defendant, was sold to Plaintiff to liquidate the ancestral debt, which was due to one Vyde Chetty; that the ⅔ds share of the land which fell to the share of the 2d Defendant has likewise been mortgaged by her to the same Vyde Chetty on account of the ancestral debt; that unless the ancestral property is held liable for the ancestral debt, he is likely to be deprived of the means of recovering the purchase money he paid to the 1st Defendant. Plaintiff therefore prays that the decree appealed from may be reversed, and that the land claimed may be awarded to him, or the purchase money and the cundayem he paid may be decreed to him with interest holding the land liable for it.

7. No answer was given in the appeal.

JUDGMENT.

8. On a perusal of the records in this case the Acting Subordinate Judge finds that the plea now brought forward in the appeal to the effect that the land claimed was sold for liquidating the ancestral debt, has not been advanced in the original pleadings. The division and sale of the property were to the prejudice of the minor and the course left open for Plaintiff is to institute a fresh suit under Circular Order No. 125 for the recovery of the purchase money he paid to the 1st Defendant. The Lower Court's decision is therefore affirmed with costs in appeal.

THE 2D JANUARY 1857.

Appeal Suit No. 80 of 1855.

Appeal from the decision of Soobbiah, District Moonsiff of Kistnagherry, dated 20th March 1855.

Maichery Gounden, (Defendant,) Appellant.

Vakeel Conairy Pundit.

Gooroovay Achary, (Plaintiff,) Respondent.

1. This is an appeal from the Moonsiff's decision awarding rupees 14-0-0 to be paid by the Appellant to the Respondent with costs.

2. The original suit was instituted for the recovery of rupees 56-10-6 on a bond executed by the Defendant on the 9th Thye of Sadaranah (January 1851) for rupees 14-0-0 promising repayment on or before the end of Thye of Virodycrith (February 1852) in default of which it was agreed that the Defendant was to pay the said sum, as well as rupees 25-4-0 remitted on settlement of former dealings and interest on the whole amount. Hence this suit.

3. In his answer the Defendant admits the execution of the karar sued on, but proceeds to state that on the 10th Pungoony of Sadaranah (March 1851) the Plaintiff borrowed of him and his brother Booroody rupees 25-0-0, and executed a karar authorizing them to enjoy the produce of his lands in lieu of interest and promising repayment of the principal on or before Pungoony of Pramateechah (March 1854) in default of which it was stipulated in the bond that the principal sum of rupees 25 was to be credited

in discharge of the two karas executed in Plaintiff's favor in the month of Thye of Sadarana (January 1851) i. e. one by the Defendant for rupees 14-0-0 and the other by Booroody for rupees 12 and that the two karars were to be returned by Plaintiff. For the foregoing reasons Defendant states he is in no way indebted to the Plaintiff. The Defendant concludes by stating that the sum of rupees 25 lent to the Plaintiff as above set forth had been borrowed by him and Booroody from one Chacrooboyee at the same time executing to him a bond shewing therein that it was borrowed for the purpose of lending it to Plaintiff and Plaintiff had attested it as a witness.

4. The Plaintiff filed the bond *A* sued on and the Defendant the two karars Nos. 5 and 6 alluded to in the answer.

5. The Plaintiff gave in a deposition in which he admits the two karars produced by the Defendant, but states that after deducting rupees 25-0-0 he owed to Defendant and Booroody, he consents to receive the balance due to him by the Defendant and his brother Booroody with reference to the bonds severally executed by them.

6. The Moonsiff considered the examination of witnesses in this case as unnecessary and observes that with reference to the tenor of the bond No. 5 filed by the Defendant, the Plaintiff was not justified in bringing this claim and that the Defendant had failed to receive back from Plaintiff the bond sued on. He therefore awarded to Plaintiff the principal rupees 14-0-0 with costs thereon and disallowed the Plaintiff's claim for the rest.

7. From this decision the 1st Defendant appeals urging that the Plaintiff's claim is not tenable with reference to the bond No. 5 filed by him and admitted by him.

8. No answer was filed in the appeal.

JUDGMENT.

3. On going through the records connected with this case, the Acting Subordinate Judge finds that with reference to the provisions of the karar No. 5 produced by the Defendant and admitted by the Plaintiff, the latter has no claim at all on the bond sued on as detailed in the original answer (giving the stipulations of the bond) filed by the Defendant, a reiteration of which is not considered now necessary. The Moonsiff's decree is therefore reversed and the Plaintiff's claim dismissed with costs both in the original and appeal suits.

THE 2D JANUARY 1857.

Appeal Suit No. 82 of 1855.

Appeal from the decision of Sevagany Pillay, District Moonsiff of Namcul, dated 16th March 1855.

Varadien, (Defendant,) Appellant,

Vakeel Appasawmy Pillay.

Aswathanarnien, (Plaintiff,) Respondent,

Vakeel Konairy Pundit.

1. This is an appeal from the Moonsiff's decision awarding rupees 100 to Plaintiff (Respondent) with costs.

2. The original suit was instituted for the recovery of rupees 100 including interest equal to the principal due on a bond executed on the 24th Auny of Soobacrith (July 1843) for rupees 50 by the Defendant in favor of Plaintiff's late father promising repayment at 10 rupees a year with interest at 12 per cent per annum. The Plaintiff states that his father died in Croody (1844) and that he attained his majority 2 years ago.

3. The Defendant answers by stating that Plaintiff's claim is false ; that Plaintiff is his nearest cousin and Plaintiff's father was at enmity with him for the past 40 years ; that the bond sued on is a fabrication, which can be seen by comparing his signature in it with those in certain other documents which he had executed to certain others and redeemed from them ; that this suit has been brought at the investigation of one Thathoovien and others who are at enmity with him.

4. The Moonsiff states in his decision that the Plaintiff gave in a deposition that the Defendant never used to eat in his house, but frequented it ; that the Defendant's witnesses prove that the Defendant was at enmity with the Plaintiff's father and with Thathoovien and another, who are Plaintiff's witnesses ; that on the other hand the execution of the bond sued on as well as the demand made and the Defendant's promise to pay are proved in evidence ; that the Defendant's signature tallies with the specimen obtained from him by the Moonsiff. He observes that the evidence for the Plaintiff is preponderatory and gave judgment for Plaintiff with costs.

5. Dissatisfied with this decision the Defendant appealed

urging that some of the Plaintiff's witnesses are at enmity with him and the others are nearly related to Plaintiff; that it is improbable that he could have borrowed money from Plaintiff's father, who is at enmity with him.

6. The Plaintiff answered upholding the justness of the Moonsiff's decision.

JUDGMENT.

7. It is shewn by the witnesses for the Defendant that enmity existed between the Defendant and Plaintiff's father, but on the other hand the due execution of the bond and the Defendant's promise to pay, are clearly established by the witnesses for the Plaintiff. The Acting Subordinate Judge sees no reason therefore fordiffering from the decision arrived at by the Moonsiff.

8. The Moonsiff's judgment is accordingly confirmed with costs in appeal.

THE 2D JANUARY 1857.

Appeal Suit No. 21 of 1856.

Appeal from the decision of Sabapathy Moodelliar, District Moonsiff of Darampoory, dated 14th December 1855.

Sittem *alias* Moottien Chetty, (2d Deft.,) Appellant.

Vakeel Narasien,

Nallapa Chetty, (Plaintiff,) Respondent.

Vakeel Venkata Soobien.

1. The Plaintiff sued to recover rupees 60-8-0 as value of certain jewels lent by his late father to that of the 2d Defendant. The Plaintiff rests his claim on a settlement made by certain mediators in Pungoony of Pramateecha (March 1854) with the mutual consent of both parties.

2. The 1st Defendant allowed the suit to go exparte.

3. The 2d Defendant denies his liability and proceeds to state that he had a certain claim against the Plaintiff; that on his asking him to settle it the Plaintiff advanced this one ; that he and Plaintiff in consequence executed a moochilka to certain mediators submitting the dispute for their decision ; that by order

of the mediators the Plaintiff had partly settled his (2d Defendant's) claim but in the meantime urged his own claim for two jewels said to have been lent by his late father to that of the 2d Defendant in Auvany of Partivah (1825) 30 years back ; that the mediators decided this claim by lottery tickets, but he (2d Defendant) dissented to the settlement of the mediators.

4. Four witnesses were examined for Plaintiff and 4 witnesses for the 2d Defendant. One witness was examined for both parties.

5. 3 documents were filed by the common witness.

6. The Moonsiff states that it is proved by the evidence of the witnesses examined for Plaintiff and by that of the common witness that 2d Defendant had a claim against Plaintiff for rupees 100 and odd on account of some mercantile transactions and that the latter had a claim against the former for jewels of 34⅛ pagodas weight received on loan by 2d Defendant's late father from that of the Plaintiff ; that both parties executed a moochilka submitting their respective disputes for their decision and agreeing to abide by it ; that after making necessary enquiry and putting in lottery tickets they passed a decision in writing to the effect that the Plaintiff should assign the outstanding debts due on merchandize amounting to rupees 95 to be paid to the 2d Defendant and that the 2d Defendant should pay to Plaintiff rupees 60½ for value of the jewels claimed ; that both parties had consented to their decision and that they heard from both parties that Plaintiff had assigned the outstanding debts to be paid to Plaintiff ; that the 2d witness for the Defendant also deposes that the 2d Defendant consented to the mediator's decision and the said 2d and 3d witnesses for Defendant prove that the Plaintiff had assigned the outstanding debts to be paid to the 2d Defendant ; that the 1st and 4th witnesses for Defendant state that Plaintiff promised to make the assignment. The Moonsiff finding that the Plaintiff's claim has been satisfactorily established by the documentary and oral evidence, as well as by the 2d Defendant's admission in his answer of having submitted the dispute for the decision of mediators, awarded to Plaintiff the amount claimed with costs to be paid by the 2d Defendant.

7. From this decision the 2d Defendant appeals urging that the Plaintiff's claim is barred by the statute of limitation, inasmuch as it rests on his private account dated 30 years back as 19th Auvany of Partivah (1825) ; that the moochilka *B* will not bind him to abide by the unjust decision *C* passed without receiving any proof whatever.

8. The Plaintiff in his appeal answer states that his claim is not barred by the law of limitation, in consequence of the moochil-

kah *B* and that the mediator's decision *C* was subsequently passed and that the mediator's decision was based upon proof.

JUDGMENT.

9. The Defendant grounds his objections to the Moonsiff's decision on the plea that the Plaintiff's claim is barred by the statute of limitation. The claim was made on a private account dated in less than 30 years ago. Till shortly before the assembling of the punchayet, no demand appears to have been made by the Plaintiff for the recovery of the value of the jewels said to have been lent, nor does any acknowledgment appear ever to have been taken from the Defendant. The view of the case taken by the Defendant appears correct. The Moonsiff's decision is therefore reversed and the Plaintiff's claim dismissed with costs both in the original and appeal suits.

ASSISTANT COURT.

ZILLAH COMBACONUM.

PRESENT : E. W. BIRD, ESQ., ASSISTANT JUDGE.

THE 2D JANUARY 1857.

Appeal Suits Nos. 147 and 151 of 1853.

Appeals from the decision of Moulavee Mahomed Utta Oolla Saib, Moofty Sudr Ameen of Combaconum, dated 30th March 1853.

No. 147.

Pichammal, (1st Defendant,) Appellant,

versus

Venkatramien, (Plaintiff,) Respondent.

No. 151.

Venkatramien, (Plaintiff,) Appellant,

versus

1. Pichammal,
2. Seetaramashastry,
3. Vasoodavashastry,
4. Tambamoortyshastry,
5. Ramaswamyshastry,

(Defendants,) Respondents.

1. The above were cross appeals from the decision of the Moofty Sudr Ameen in Original Suit No. 54 of 1852.

2. The Plaintiff in the first instance sued for a decision declaring him entitled to succeed, on her death, to the property at

present in enjoyment of the 1st Defendant, the widow of a late co-parcener ; also for the immediate transfer of the merassy registry of the nunjah and poonjah land in her enjoyment, together with the present superintendence of the said estate. He sued for the above on the grounds that he was himself the sole heir to this property after the death of the widow, as provided in an agreement under which it had been made over to her possession by the co-parceners in lieu of maintenance ; adding that the 1st Defendant at the instigation of others, was now alienating the said estate to the detriment of his (Plaintiff's) interests.

3. In answer the 1st Defendant contended that the agreement under which the land &c. sued for had been made over to her by the Plaintiff's father and his co-parceners, constituted her the absolute owner of the said property in consequence of the death, without issue, of the Plaintiff's brother one Tyagarajien ; who by the above mentioned document was appointed her heir. She added, that she had subsequently adopted the 5th Defendant (son of the 2d Defendant), and had appointed him her heir by will ; that the Plaintiff had no concern whatever in her estate, but had on the contrary admitted her absolute proprietorship in certain transactions he had held with her.

4. The 2d Defendant's answer supported that of the 1st and denied the Plaintiff's (and his own) right to the 1st Defendants' property as claimed in the plaint.

5. The 3d, 4th and 5th Defendants were exparte.

6. The reply supported the plaint. There was no rejoinder.

7. The Plaintiff examined 5, the 1st and 2d Defendants 7, witnesses. The latter filed 7, the former 1, document.

8. The Moofty Sudr Ameen found that the Plaintiffs and 2d Defendant's fathers, had concurred in making over the property in issue to their brother's widow (the 1st Defendant) in lieu of maintenance, and that it was not just, the property on the death of the latter should pass out of the family to the possession of the 5th Defendant (an adopted son of the widow, and her brother-in-law's grandson). He declared therefore, that on the death of the 1st Defendant, the property must be equally divided between the Plaintiff and 2d Defendant (the sole surviving co-parceners of the 1st Defendant's late husband) and that the parties should pay their own costs.

9. The 1st Defendant in Appeal Suit No. 147 of 1853 urges against this decision ;

i. That the agreement *A* filed by Plaintiff clearly gave her

(the 1st Defendant) absolute control over the property specified therein, in consequence of the death of Plaintiff's brother who was therein declared to be her heir ;

ii. That her adoption of the 5th Defendant was legal, and ought to have been upheld ;

iii. That her will in his favor, was also proved, and ought to have been confirmed ;

iv. That the Lower Court's decree is manifestly erroneous because it gave the 2d Defendant (who renounced all claim) a share in the property, equally with Plaintiff;

v. That she and her adopted son the 5th Defendant have enjoyed the property in issue 20 years with independent rights, which rights have been freely exercised in regard to mortgages effected on the said property, with Plaintiff's cognizance, as originally proved. She prayed under these grounds for the rejection of Plaintiff's suit, and for the reversal of the original decree.

10. The Plaintiff (Respondent) denied in his answer the Appellant's allegations. and set forth the arguments undermentioned, in support of his claim to the entire estate, he sued for originally.

11. As Appellant in Appeal Suit No. 151 of 1853, the Plaintiff submitted ;

i. That the agreement *A* clearly stipulates that the 1st Defendant's interest in the property made over to her thereby, was only a life interest, and that on her death the estate was to devolve on a member of Plaintiff's family to the exclusion of the other branch represented by the 2d Defendant ;

ii. That the 2d Defendant having renounced all right to the estate in his original answer, the Lower Court was wrong in giving him a share, and in declaring Plaintiff entitled only to a moiety of the property in issue ;

iii. That his (Plaintiff's) pleas have been fully supported by the oral evidence, originally adduced ; and

iv. That the 1st Defendant's adoption of the 5th Defendant is a proceeding altogether repugnant to the Hindoo law and is consequently null and void. He prays with reference to these arguments, that the Lower Court's decree may be modified, and the prayer of his plaint petition granted.

12. The 1st Defendant (as Respondent) repeats in her answer the objections set forth in her appeal petition in No. 147 above-

mentioned, and adds that the Plaintiff's suit was clearly barred by the statute of limitations, as she has been 24 years and more in independent possession of the property in issue.

13. The Assistant Judge on the 3d March 1856 modified the Lower Court's award to the extent of declaring that the 2d Defendant's renunciation of his claim acted as an estoppel against him and his heirs and that the Sudr Ameen was in error in granting him what in his original answer the 2d Defendant neither wanted nor claimed.

14. The Court of Sudr Udalut admitted a special appeal in this case and remanded it for decree de novo on the 10th November 1856 because it appeared to the Judges that "the 2d "Defendant's admission in support of the 1st Defendant and "renunciation of his claim in favor of his son the 5th Defend-"ant, had reference to the situation of these parties if his son's "adoption was held to be valid, and was not intended to be a total "renunciation of his rights to a share of the property, if his son's "adoption and consequent claim to heirship were disallowed."

15. The Assistant Judge having accordingly replaced the suit upon the file and adopted the interpretation of the 2d Defendant's pleas pointed out by the higher Court, finds that under the view of the case previously recorded in the appeal decision of the 3d March last, and which the Court can see no reason to modify now, the Plaintiff will be entitled on the 1st Defendant's demise to a moiety of the property now in issue, and that the 1st Defendant has only a life interest therein without the right of alienation. With a view further to secure the Plaintiff's interests the Court will also direct the transfer of the merass registry of the said moiety of property in land to his name, but does not consider it proper to grant him the immediate superintendence of the said share of estate during the 1st Defendant's life time, as solicited. The Plaintiff's claim further to the entire property in issue (to the exclusion of the 2d Defendant's rights) has not been supported by any evidence. The provision in the document *A* under which such a plea might possibly have been maintained has been cancelled by the death of the Plaintiff's brother during the 1st Defendant's life time. As there has been no survivorship the inheritance must now devolve in conformity with the provisions of the Hindoo law.

16. By the above award the claims of the 2d Defendant are in no way affected and it will remain with him to assert or not as he may consider expedient his right to the remaining moiety of the contested property to which he has a reversionary claim.

17. The Assistant Judge considers it unnecessary to repeat the arguments which led him in the first appeal decision to concur with the Moofty in rejecting the 1st Defendant's alleged adoption

of the 5th Defendant, as well as the execution of a will in favor of the latter by the former. The Assistant Judge was * then, and is now, of opinion, that the said adoption was illegal and invalid under Hindoo law, and that the will was clearly null and void because the widow (1st Defendant) had no authority under the deed *A* to alienate by will, and dispose of, property placed (only during life time) in her enjoyment in lieu of maintenance, without the direct consent of her late husband's co-parceners, of whom Plaintiff was one of only two survivors.

* See paras 14 and 15 of the former decree.

18. The parties will pay their own original and appeal costs. Those of the special appeal to be paid by the Plaintiff.

THE 2D JANUARY 1857.

Appeal Suit No. 55 of 1854.

Appeal from the decision of Mr. T. Wilkins, District Moonsiff of Keevalore, dated 23d December 1853.

Samootambly Marakayen, (3d Defendant,) Appellant.

Vakeel Ramier.

versus

Pichy, (Plaintiff,) Respondent.

1. The Plaintiff sued for rupees 107-5, the balance of principal with interest due on a bill of sale relating to a house sold to the 1st Defendant for rupees 155.

2. The 1st Defendant admitted his purchase of the above property, but pleaded the full discharge of the consideration through the 3d Defendant as sanctioned by Plaintiff and one Tylammal her relation, who also signed the deed of sale. The 1st Defendant added that in consequence of disputes between the said parties the 3d Defendant deposited the purchase money with the 2d Defendant.

3. The 2d Defendant in answer admitted the receipt of rupees 175¼ from the 3d Defendant as the sale proceeds due to Plaintiff on the above transactions, but pleaded the repayment of the entire amount to the 3d Dfendant.

4. The 3d Defendant made no answer to the suit.

5. The 1st Defendant filed two, the 2d Defendant, three documents. The Plaintiff examined one, the 2d Defendant five witnesses. Two were examined jointly for Plaintiff and the 1st Defendant; three for the Plaintiff, 1st and 2d Defendants.

6. The District Moonsiff exonerated the 1st and 2d Defendants from liability, but decided that the 3d Defendant should make good the sum sued for, with interest and costs, after deducting the sums of rupees 35 and rupes 5-7-0, for the discharge of which to Plaintiff and Tylummal, evidence had been adduced.

7. The 3d Defendant appeals stating;

i. That he was unable to defend the original suit because engaged in a case before the Magistracy;

ii. That the Plaintiff is not legally competent to sue alone, the sum claimed being clearly due by her own pleas, to herself and Tylummal jointly;

iii. That the sum deposited by Plaintiff and Tylummal jointly, in charge of the 2d Defendant, was afterwards duly paid to them in proportionate shares by himself (Appellant) under dates 10th May and 2d June 1857;

iv. That receipts have been received from the parties for the said payments.

8. The Respondent made no answer to the above appeal.

9. The Assistant Judge summoned the Appellant, Plaintiff, and the party named Tylummal, in order to ascertain if the Appellant's allegations were correct, and why the latter was not included as a Plaintiff in the suit. The Appellant failed to attend; and on inquiry as to Tylummal's connexion with the suit, it appeared that her interest in it had been cancelled by a money settlement between herself and her sister-in-law the Plaintiff. The Appellant's 2d ground for appeal therefore, is of no value.

10. In regard to the payments and receipts pleaded for the first time in this appeal, as a bar to the Plaintiff's suit, the Court has to observe that after due notice the Appellant has failed to appear in order to substantiate his statement, and his Vakeel in the Civil Court admits his inability to support the said plea by the production of the receipts alleged to have been granted by Plaintiff and her relative to the Appellant. The Court must therefore reject this appeal.

11. The Appellant further had ample opportunity during the original stage of the proceedings to file the documents in question,

for he had notice of the suit in August 1851, and the Lower Court did not proceed to judgment till upwards of 2 years had elapsed from and after that date. The Appellant took no step to assert his rights during this long interval and the Court can only argue therefrom that his statements on the subject now are false.

12. The Appellant is to pay the costs.

THE 2D JANUARY 1857.

Appeal Suit No. 59 of 1854.

Appeal from the decision of Kistnasamier, District Moonsiff of Nunnilum, dated 31st December 1853.

Soobba Oodian, (1st Defendant,) Appellant,

versus

Meenatchy Ummaul, (Plaintiff,) Respondent.

1. The Plaintiff sued for rupees 149-10-4, the balance of principal with interest due on a canacaroopoo or settlement of accounts dated 12th July 1838 executed by the 1st Defendant's father.

2. The 1st Defendant denied the claim in toto pleading the general issue.

3. The 2d and 3d Defendants were exparte.

4. The Plaintiff examined 4, the 1st Defendant five, witnesses. Each party filed an exhibit.

5. The District Moonsiff considered the Plaintiff's evidence satisfactory and decreed accordingly in his favor as sued for.

6. The 1st Defendant appeals arguing ,

1st. That the canacaroopoo *A* is a forgery got up by one Samenada Moodelly, Plaintiff's agent and Appellant's personal enemy ;

2d. That the evidence of Plaintiff's witnesses is contradictory and incredible ;

3d. That the alleged part-payments under the account have not been satisfactorily proved and that therefore the suit

itself falls to the ground with reference to the date of the alleged transaction under the rule of limitations ;

4th. That the proved sale of a house by Plaintiff to himself 13 years after the date of the alleged account also argues against his plea that the said debt is still unsettled ;

5th. That his father the alleged grantor of the account A died 2½ years before the date of the said document.

7. The Respondent made no answer to the above appeal.

8. On reference to the original record of this suit the Assistant Judge can see no just ground for distrusting the direct and clear statements of Plaintiff's four witnesses in favor of his claim and observes that the Appellant's objections to the award of the Lower Court, are unsupported by the record.

9. The appeal must therefore be dismissed with costs.

THE 2D JANUARY 1857.

Appeal Suit No. 60 of 1854.

Appeal from the decision of Kistnasamier, District Moonsiff of Nunnilum, dated 28th December 1853.

Arnachella Pillay, (Plaintiff,) Appellant,

versus

1. Deyvapillay,
2. Vyapoorypillay,
3. Rungapillay,
4. Nalloopillay,

(Defendants,) Respondents.

1. The Plaintiff sued for the right to redeem ⅛ pungoo of land valued at rupees 20-8-6 conditionally sold by him to the Defendants' father 9 or 10 years before the date of suit for rupees 13.

2. The 1st and 3d Defendants pleaded that the said sale was effected so far back as the 19th May 1836 and was absolute. The other Defendants were exparte.

3. The Plaintiff replied and the 1st and 3d Defendants rejoined.

4. The Plaintiff examined 4, the 1st and 3d Defendants 3, witnesses. One was cited by them jointly. The 1st and 3d Defendants produced 5 exhibits.

5. The District Moonsiff dismissed the Plaintiff's suit because no satisfactory evidence had been adduced to prove the conditional character of the sale in issue beween the parties. The Court held that under these circumstances the Defendant's title was adverse to Plaintiff's, and his occupation of the land having exceeded 12 years the Plaintiff's right to sue had expired with reference to the rule of limitations.

6. In appeal the Plaintiff submits ;

i. That his witnesses have proved that the conditional deed of redemption was duly executed at the time of the sale and that this document though now lost, gave him the right to recover his property whenever he chose to demand its redemption ;

ii. That the merass registry and cultivation moochilkas are still in his (Appellant's) name in regard to the said land ; and

iii. That had there been no conditional agreement and the land had been sold for its proper value, the vendee would not have failed to secure the merass registry of it in his own name. He prays therefore for the reversal of the original decision.

7. The 3d Respondent in answer submitted that his long undisturbed possession under his deed of sale No. 4 rendered it immaterial whether or no the registry were in his name ; that the land was sold by Plaintiff for its then selling price and that the original decree was perfectly correct.

8. The Assistant Judge has carefully gone over the evidence and proceedings in this case and can see no reason to differ from the conclusion arrived at by the Moonsiff.

9. The "conditional agreement" has not been produced by the Plaintiff, and its execution is to say the least, exceedingly doubtful from the evidence of his own witnesses. The statements of the latter are contradictory in reference to an alleged offer of the Plaintiff to redeem the land on one occasion. The Defendants on the other hand have established their pleas by satisfactory testimony and the Court concurs with the Moonsiff in deeming the Plaintiff's rights extinct under the statute of limitations.

10. The failure of the Defendants to secure the merassy registry of the disputed land is satisfactorily explained by their 1st witness.

11. The appeal is dismissed with costs.

THE 2D JANUARY 1857.

Appeal Suit No. 61 of 1854.

Appeal from the decision of Runga Row, District Moonsiff of Munnargoody, dated 23d December 1853.

Appoosamien, (1st Defendant,) Appellant,

versus

Seenevasien, (Plaintiff,) Respondent.

1. The Plaintiff sued for rupees 54-7-0, the value of paddy due to him by the Defendants as arrears of swamybhogum rent on certain land purchased by Plaintiff's father from the 1st Defendant but which the latter had from the date of sale retained in his own enjoyment as the lessee thereof.

2. The Defendants suffered judgment to go by default.

3. The Plaintiff filed 3 documents and examined 3 witnesses.

4. The District Moonsiff found that the 1st Defendant was the person actually answerable to Plaintiff for the rent claimed ; but that the 2d Defendant's husband had nominally executed the lease in Plaintiff's favor. He made the 1st Defendant therefore answerable for the sum claimed in the first instance holding the 2d responsible if the 1st Defendant's property were insufficient.

5. The 1st Defendant appeals stating ;

1st. That he was ill, during the original enquiry and failed to make answer, because he believed the Plaintiff would withdraw the action ;

2d. That the 2d Defendant's husband actually executed the lease and was from the first in enjoyment of the land ;

3d. That therefore he ought to have been alone held answerable for the amount claimed ;

4th. That Plaintiff's pleas and oral evidence are false in respect to his (Appellant's) alleged enjoyment of the said land ; and

5th. That if answerable Plaintiff would have come to some settlement with him (Appellant) for the rent, when a rauzeenamah was filed regarding the sale amount of certain land in Original Suit No. 100 of 1852 (Moofty's file) and again during the rauzeenamah in Original Suit No. 383 of 1853.

6. The Respondent allowed himself to be declared exparte in appeal.

7. The Assistant Judge having carefully perused the proceedings in this case, can see no cause to interfere as solicited by Appellant.

8. It is clear from Plaintiff's evidence that the land in question was in enjoyment of the 1st Defendant, and that the 2d was put forward by the 1st to execute the lease *A* in favor of the Plaintiff's father. Under these circumstances, the Lower Court acted correctly in holding the 1st Defendant responsible and the Assistant Judge will not modify its decision as now requested.

9. The 1st Defendant had ample opportunity for appearing before the Moonsiff to answer the original suit either personally or by Vakeel. He signed the notice of suit before the 31st March 1853 but took no steps to represent his case before the original Court, though its decree was recorded so late as 9 months afterwards. In the face of this wilful neglect the Court will not reopen the enquiry now, but resolves to confirm the original decree.

10. The Appellant is to pay his own appeal costs.

THE 2D JANUARY 1857.

Appeal Suit No. 63 of 1854.

Appeal from the decision of Moulavee Mahomed Adavoollah Saib, Moofty Sudr Ameen of Combaconum, dated 31st December 1853.

Gopaulien, (Plaintiff,) Appellant,

versus

1. Cooppary Iyen,
2. Ramachendrien,
3. Sashy Ummaul,

} sons and heirs of the 1st Defendant, } Respondents.

1. The Plaintiff sued for rupees 38 principal with balance of interest due to him on a mortgage bond executed by the 1st Defendant on the 26th June 1836 and on account of which only rupees 2 interest had been discharged on the 15th July 1847.

2. The 2d Defendant in answer denied the claim in toto and stated that the land alleged to have been mortgaged to Plaintiff by his father (the 1st Defendant) never belonged to the latter and could not have been hypothecated to Plaintiff as alleged.

3. The 4th Defendant supported the above plea in her answer.

4. The 1st and 3d Defendants were exparte.

5. The Plaintiff replied. There was no rejoinder.

6. The Plaintiff and 2d Defendant each filed a document. The former examined 4, the latter 2, witnesses.

7. The Moofty Sudr Ameen could place no credit on the statements of the Plaintiff's witnesses in regard to the Defendant's alleged promises and single part payment pleaded by Plaintiff. Observing therefore that the suit was barred by the rule of limitation he dismissed it with costs.

8. The Plaintiff appeals arguing ;

i. That the mortgage bond has been proved by the evidence of one witness (the 2d) ;

ii. That the 3d and 4th witnesses have adequately proved also the part payment of rupees 2 and the promises of the 1st Defendant ;

iii. That consequently the operation of the statute is barred and the Lower Court's decree incorrect;

iv. That a bond *B* filed in the next suit was executed by the 1st Defendant and clearly acknowledges the bond now in issue. He prays that evidence in regard to the said document may now be admitted and the original decree reversed.

9. There was no appeal answer.

10. The Appellate Court finds on perusal of the recorded evidence that the Moofty's decision is correct.

11. The execution of the bond *A* is not proved by satisfactory evidence, and even if there were not this fatal objection to the suit, the Plaintiff's evidence in proof of the 2d Defendant's alleged part-payment and promises of payment is utterly worthless, and the suit on that account becomes barred by the rule of limitations. A reference to the document *B* filed in the succeeding suit does not affect this result, because this latter document even if proved, which it is not, bears date 1837, and cannot constitute a bar to the operation of the statute as against the Plaintiff.

12. The appeal is dismissed with cos's.

THE 2D JANUARY 1857.

Appeal Suit No. 64 of 1854.

Appeal from the decision of Moulavee Mahomed Adavoolla Saib, Moofty Sudr Ameen of Combaconum, dated 29th December 1853.

Maliappillay, (Plaintiff,) Appellant.

Vakeel Ramier.

versus

Mahalingien, (Defendant,) Respondent.

Vakeel Samy Sastry.

1. The Plaintiff sued for the transfer of the merass registry of the village of Gangaunody which he had purchased from the

Defendant on the 29th September 1848, for rupees 2,515 and which had since been delivered over to his own enjoyment.

2. The Defendant stated in answer that the real purchaser was one Ponnoosamy Pillay, the Plaintiff being merely nominally concerned in the transaction; that the purchase money was not fully liquidated, and that Plaintiff had besides executed an agreement binding himself to collect and pay the vender certain outstanding balances due by the cultivators to the latter, before the merass registry should be transferred to his (the Plaintiff's) name.

3. The Plaintiff in reply pleaded that the Defendant had not produced the notes of hand executed by the said cultivators in his favor and that therefore the terms of the agreement could not be carried into effect.

4. There was no rejoinder.

5. The Plaintiff examined 4, the Defendant 6, witnesses. One was examined for them jointly. The Plaintiff filed 2 documents.

6. The Hindoo Sudr Ameen decided for Plaintiff with costs, observing that the Defendant should sue the Plaintiff for what might be due to him under the agreement. The agreement itself was not permitted by the Court to be produced in evidence.

7. The late Assistant Judge Mr. Swinton on appeal from the Defendant in No. 347 of 1850 remanded the suit for decision de novo, on the grounds that the said agreement (which the Appellate Court had inspected and filed) was material evidence for the defence and ought to have been received by the Sudr Ameen before coming to a decision on the merits.

8. The Sudr Ameen Moofty to whom the inquiry was next confided, admitted the said agreement with 40 other documents connected therewith, and gave judgment as follows. He decided that the Plaintiff was bound by the conditions of the agreement he admitted, and that his liabilities to the Defendant under its provisions and with reference to the notes of hand filed by the latter, amounted to rupees 653-0-11¼. It was ordered therefore that when the Plaintiff had paid that sum to the Defendant the latter should transfer the merass registry sued for; each party to pay his own costs.

9. The Plaintiff appeals arguing;

i. That the agreement alluded to does not specify either the exact amount payable to the Defendant by the cultivators, nor the parties who owed the said money;

ii. That the Defendant did not put him in a position to realise these debts by placing the proofs of debt in his (Appellant's) possession ;

iii. That the Moofty was therefore wrong in assuming the amount of debt from the documents filed by the Defendant and making him (Appellant) answerable for the whole sum ;

iv. That as originally decreed it is just to compel the Defendant to transfer the merass registry at once, leaving him (the Defendant) to institute legal proceedings against the ryots for the sums due including himself (Appellant) as a Defendant, under the agreement. He prays the Court to follow this course now and to reverse the original decree.

10. The Respondent contended that the Moofty's decision was correct and ought to be affirmed.

11. The Assistant Judge on careful perusal of all the papers connected with the two decrees and two appeals made in this case, finds that the point for decision is not Plaintiff's indebtedness to the Defendant, but whether matters are in such a state between the parties with reference to the agreement (No. 41), acknowledged by the Plaintiff, as that the latter can now demand the transfer of the merassy registry of the land he bought from the Defendant, and this point in the opinion of the Court can only be decided in the negative.

12. Under the agreement No. 41 the Plaintiff covenanted to realise certain (unspecified) bonded debts due to the Defendant from the cultivators of his newly purchased village and after paying over to the Defendant the proceeds (less a large per centage he was entitled to retain), he stipulated that the merassy should then be transferred to himself. The first part of the covenant however has not been performed by Plaintiff in consequence of disputes as to the exact amount due to the Defendant by his late cultivators, the Plaintiff having been also unwilling to adopt the amount of liability which the bonds in the Defendant's hands shew to be due to the latter from the said ryots (see evidence of the joint witness).

13. The dispute in question cannot it is clear be settled in this suit, because the interests of the said ryots, who are no parties to it, are concerned ; and it is probable that unless the parties can come to an amicable adjustment, the sums actually due by his late ryots on the forty bonds now filed by the Defendant cannot be judicially determined without considerable litigation in which the said ryots must, it would seem, be also involved.

14. The result is of course hard upon the Plaintiff, who

probably when the executed the agreement No. 41 did not foresee the consequences ; but having bound himself, the Court has only to hold him answerable for his own act and deed.

15. " The onus or obligation to collect the arrears for the Defendant devolved on the Plaintiff" and nothing appears to shew either that " he used due diligence to effect the same or had been frustrated by any act or neglect on part of the Defendant." The Plaintiff has clearly therefore, under the conditions of his own agreement aforesaid, no right whatever to claim the transfer of the registry and his suit to effect this ought to have been originally rejected.

16. The suit is accordingly dismissed, but under all the circumstances of the case, the parties shall pay their own costs throughout.

THE 3D JANUARY 1857.

Appeal Suit No. 65 of 1854.

Appeal from the decision of Moulavee Mahomed Adavulla Saib, Moofty Sudr Ameen of Combaconum, dated 31st December 1853.

Gopaulien, (Plaintiff,) Appellant,

versus

Annavien (1st Defendant) having died his sons and heirs,
1. Cooppary Iyen,
2. Ramachendrien, and
3. Sashyammaul, } Respondents.

1. The Plaintiff sued for rupees 102, the balance of principal with interest due on a mortgage bond dated 26th June 1826, executed by the 1st Defendant in Plaintiff's father's favor. A part-payment of rupees 5 was pleaded by Plaintiff as having been received by him in 1847 on account of the bond.

2. The 2d Defendant denied the truth of Plaintiff's pleas in toto.

3. The 4th Defendant supported the answer of the 2d.

4. The 1st and 3d Defendants were declared exparte.

5. The Plaintiff replied. There was no rejoinder.

6. The Plaintiff filed 2, the 2d Defendant one, document. The former examined 3 witnesses.

7. The Moofty Sudr Ameen could attach no credit to the mere oral evidence of Plaintiff's witnesses in regard to the Defendants' alleged part-payment pleaded by Plaintiff; and observing further that the bond in issue was not proved at all, the Court dismissed the suit with costs.

8. The Plaintiff appeals and states;

i. That the bond *A* has been proved by one witness and is supported by the bond *B*;

ii. That the part-payment and promises, to pay, of the Defendants are also proved;

iii. That the Lower Court was not justified in rejecting the said evidence and in considering the suit barred by the lapse of time;

iv. That the document *B* which proves the bond *A* can now be proved by sufficient evidence, and this inquiry the Appellant requests the Court to undertake.

9. The Respondents made no answer to this appeal.

10. The Court concurs with the Moofty in the opinion that the evidence adduced by Plaintiff has failed to establish the bond *A* on which the suit itself depends.

11. Even if the bond were established however the evidence tendered to prove the bar to the operation of the statute of limitations is of so incredible and worthless a character, that the Court has no hesitation in confirming the original decree dismissing this appeal therefrom with costs.

THE 3D JANUARY 1857.

Appeal Suit No. 71 of 1854.

Appeal from the decision of Adeseyem Pillay, District Moonsiff of Puttoocottah, dated 26th January 1854.

Moottootumby Chetty, (Plaintiff,) Appellant,

versus

Iyaloo Naick, (Defendant,) Respondent.

1. The Plaintiff sued for rupees 25-5-4, the principal with interest due to him on a catchattoo executed by the Defendant on the 14th August 1851.

2. The Defendant pleaded the general issue.

3. The Plaintiff filed the catchattoo and examined 2 witnesses.

4. The Moonsiff found that the Plaintiff's two witnesses had given false testimony on a point material to the issue, and seeing reason besides to discredit the Plaintiff's claim, he dismissed it with costs.

5. The Plaintiff in appeal urges ;

i. That the document in question is in the Defendant's own handwriting and the latter would never dare to deny it ;

ii. That this fact can now be proved ;

iii. That he has more to say in opposition to the original decree but cannot afford to buy an additional stamp paper to prepare the objections.

6. The Respondent prayed the Court to confirm the original decree and emphatically denied his indebtedness to the Plaintiff.

7. The Appellate Court on reference to the record concurs with the Moonsiff in considering the Plaintiff's evidence false. The Plaintiff had full opportunity but failed to adduce satisfactory proof of the document filed as *A* before the Court of original jurisdiction. The evidence now stated to be forthcoming will not therefore be admitted.

8. The appeal is dismissed with all costs.

THE 5TH JANUARY 1857.

Appeal Suit No. 72 of 1854.

Appeal from the decision of Adeseyem, District Moonsiff of Puttoocottah, dated 31st January 1854.

1. Sadasivem Pillay,
2. Punchanadem Pillay,
3. Soobramaniya Pillay,
(Plaintiffs,) Appellants,

Vakeel Soondera Row.

versus

1. Soobramaniya Pillay,
2. Ramalinga Pillay,
3. Maikamparooma Pillay,
4. Shanmooga Pillay,
5. Sinnia Pillay,
6. Naroyana Pillay,
7. Sinnia Pillay,
8. Vala Auram,
(Defendants,) Respondents.

1. The Plaintiffs stated that they had entrusted $\frac{5}{8}$ths of a caray of land with their "divided" co-parceners the 1st, 2d and 3d Defendants in the year 1824, and had then proceeded to other places to obtain a livelihood, but that on their return home in 1851, their property, $\frac{3}{8}$ths of a caray, was not restored. They therefore prayed for the interference of the Court suing also for certain trees valued at 4½ rupees besides the land aforesaid.

2. The 5th Defendant in answer denied that the Plaintiffs were parceners of the 1st, 2d and 3d Defendants and declared that the latter had sold his (5th Defendant's) father $\frac{3}{4}$ths of the caray of land mentioned by Plaintiffs in May 1829, since which period a portion had been transferred to one Sashappien and the rest uninterruptedly enjoyed by his (5th Defendant's) father and himself.

3. The 2d Defendant in a separate answer corroborated that of the 5th.

4. The other Defendants were placed exparte.

5. The Plaintiffs examined 5, the 2d and 5th Defendants 4, witnesses conjointly. The 2d Defendant called 2 witnesses. The 5th Defendant alone, filed 2 documents.

6. The Moonsiff found the Plaintiff's suit wholly unsupported by the necessary documentary evidence; the testimony of their witnesses hearsay, unsupported, and contradictory of the plaint; and lastly he observed that the action itself was inadmissible, because barred by the statute of limitations.

7. The Plaintiffs appeal arguing,

i. That they have documents to prove their relationship to the 1st, 2d and 3d Defendants, but that these documents the Lower Court did not call for, and did not permit to be filed;

ii. That their witnesses have fully proved the division between themselves and parceners although no documents were executed on that occasion;

iii. That the 5th Defendant's account of the manner in which he alleges that ¾ths caray of land came into his possession is false;

iv. That the 2d and 5th Defendants' witnesses are not trustworthy and in collusion with them. They pray the Court to admit the documents now forthcoming and to decree in their favor as sued for.

8. The 5th Respondent in answer contends that the original decree is correct and that the Plaintiffs were distinctly called on to prove their alleged relationship to the 1st, 2d and 3d Defendants but failed to do so. He argues that the documents now mentioned not having been forthcoming during the original inquiry, must have been subsequently fabricated, and are false.

9. The Assistant Judge having carefully gone over the proceedings held in this case finds that the objection to the Plaintiffs' suit urged by the Moonsiff in the last paras. of his decree ought to have led to its dismissal in the first instance, without reference. to the merits. For, on the Plaintiffs' own shewing, the action was barred by the statute of limitations. The land in issue, has been as admitted by the Plaintiffs in the Defendants' possession since 1824, and no fact has been pleaded and no exception proved which can be held to constitute a bar to the operation of the rule against them.

10. The Court has only to add that the Plaintiffs had ample opportunity (but neglected) to bring forward during the original stage of the proceedings the documentary evidence alluded to in the appeal. The allegation that the Moonsiff refused to admit the exhibits is found from the record of the suit to be false. These documents were then, as now, irrelevant to the issue, because the 5th Defendant has been in possession of the land in dispute under

a title adverse to Plaintiffs, for a period, as proved in evidence, far in excess of that limited by law for an action for ejectment, on part of Plaintiffs.

11. The Plaintiffs' oral evidence is besides worthless. It is mere hearsay, contradictory and inconsistent with the plaint, and in the opinion of the Court, false.

12. The Plaintiffs have preferred a frivolous and litigious appeal. They are fined rupees 5 each for so doing under Section XXXV, Regulation IV of 1802.

13. The appeal is dismissed with costs.

THE 5TH JANUARY 1857.

Appeal Suit No. 75 of 1854.

Appeal from the decision of Kistnasamy Iyer, District Moonsiff of Nunnilum, dated 19th January 1854.

Palaniyuppatumbiraun, (Plaintiff,) Appellant,

Vakeel Soondara Row.

versus

Cadirvaloo Pillay, (Defendant,) Respondent.

1. The Plaintiff sued for rupees 62-8, the principal with interest due on an astachy or bond executed by the Defendant binding himself to measure 50 collums of paddy to the Plaintiff, by a certain date.

2 The Defendant admitted the astachy but stated that he was not answerable, as he had executed it as agent for and on account of the stanikars of the Stree Teagerajaswamy pagodah, for the benefit of an endowment in the said temple, wherein the Plaintiff was also a trustee.

3. The Plaintiff replied ; there was no rejoinder.

4. The Plaintiff examined 3, the Defendant 7, witnesses, the former filed the document in issue. A witness was examined on part of the Court.

5. The District Moonsiff found that the debt in question was, if due at all, clearly due by the stanikars of the pagodah as

acknowledged by themselves before the Court, and that the Defendant was only concerned in the matter as their agent. The Court observed that it was impossible to ascertain whether the amount of the document had been paid off (as asserted by the Defendant) or not, without making the said stanikars a party to the suit, and as the Plaintiff had omitted to do this, he nonsuited him with permission to institute a fresh action against all the parties really concerned.

6. The Plaintiff appeals urging;

i. That the Defendant alone executed the astachy *A* and promised on demand to pay its amount;

ii. That the stanikars are not liable for the amount in dispute although they have collusively declared they were the actual parties to it, not the Defendant;

iii. That therefore the Defendant only ought to be made answerable for the sum sued for. He requests the Court to grant him the prayer of his original suit.

7. To this appeal the Respondent made no answer.

8. The Assistant Judge has perused the original proceedings and evidence and concurs with the Moonsiff in considering that the Plaintiff has not included in his suit the proper parties really liable for the amount claimed. It is evident from the testimony of the Defendant's witnesses and indirectly from the Plaintiff's document itself, that the paddy in question was borrowed for the use of the temple by the stanikars of the pagodah in the name (as usual) of their agent the Defendant. Unless therefore these parties (who admit that if any thing be due they are themselve liable) be included in the suit it is manifestly impossible to determine whether the debt has been cleared off by counter dealings, as stated by the said stanikars, or whether it is still due, as contended by Plaintiff.

9. It is clear to the Court that the Defendant is not the debtor as the Plaintiff maintains in the appeal, and therefore it resolves to confirm the original decree, and to dismiss the appeal with costs.

THE 6TH JANUARY 1857.

Appeal Suit No. 93 of 1854.

Appeal from the decision of Nagalinga Moodelliar, District Moonsiff of Trivady, dated 25th January 1854.

Sangamalum, (1st Defendant,) Appellant,

versus

Meeralevvyrowten, (Plaintiff,) Respondent.

1. The Plaintiff sued for rupees 52-8-5, principal with interest due on an account or bond executed in his favor by the late husband of the 1st and 2d Defendants.

2. The 1st Defendant denied the plaint in toto and pleaded the general issue.

3. The other Defendants were placed exparte.

4. The Plaintiff filed a document and examined 4 witnesses. The Court interrogated two other parties in order to ascertain whether the Plaintiff's witnesses were worthy of credit.

5. The Moonsiff came to the conclusion that the claim was a just one and the evidence in support of it true. Judgment went therefore in Plaintiff's favor as sued for with interest and costs.

6. In appeal the 1st Defendant submits,

i. That the Plaintiff's witnesses are not to be believed and the Lower Court itself felt so doubtful on the subject that it was forced to receive evidence as to whether they were worthy of credit or not;

ii. That she (Appellant) has instituted a Suit No. 660 of 1852 (Papanassem Moonsiff's file) against the Plaintiff for the value of certain trees, and the records of that case will prove the document now filed as *A*, to be false;

iii. That the Respondent should be called on to make oath to the truth of his plaint.

7. The Respondent in answer declared that the Lower Court had decided correctly and that Suit No. 660 above referred to had been dismissed as false. He added that he did not feel himself called on to swear to the truth of his plaint as it was already proved

by evidence and he requested the Court to dismiss the appeal with costs.

8. The Assistant Judge finds on reference to the record that the Moonsiff's appreciation of the Plaintiff's evidence was correct and unobjectiohable, and that the Appellant has not advanced any valid grounds which could justify the Court in adopting a different view of the facts in issue.

9. The suit alluded to by the Appellant (No. 660 of 1852) has come before this Court in Appeal No. 171 of 1854 and judgment has been recorded against the present Appellant therein.

10. This appeal is dismissed with costs.

THE 6TH JANUARY 1857.

Appeal Suit No. 171 of 1854.

Appeal from the decision of Nagalinga Moodelliar, District Moonsiff of Trevady, dated 28th April 1854.

Sangamalattoyee, (Plaintiff,) Appellant,

versus

Toppool Rowten *alias* Meeralevvy Rowten, } (Defendant,) Respondent.

1. The Plaintiff sued for rupees 63-15, the balance of principal with interest due on an account dated 20th August 1846, executed by the Defendant and his late son, in Plaintiff's late husband's favor, in reference to certain timber and trees sold by the latter to the former.

2. The Defendant in answer declared that the claim was false and that a brass "codum" said to have been given in part payment of the above debt was in fact sold to the Plaintiff's husband who had failed to pay the price.

3. The Plaintiff filed the account and examined 6, the Defendant 2, witnesses.

4. The Moonsiff observed that the account filed by Plaintiff was not signed either by the Defendant or by his son. The document itself, the Court held to be a fictitious one, because had it been in existence as alleged in 1246, the bond of 1848 which

was proved to have been executed in the Defendant's favor by the Plaintiff's late husband (filed in Original Suit No. 280 of 1853 same Court's file) would obviously have been unnecessary, the parties to the two documents being the same, and the former debt being as alleged unadjusted, at the date of the latter transaction. Judgment went therefore against Plaintiff with costs.

5. The Plaintiff appeals urging,

i. That the just argument is the reverse of that employed by the Moonsiff, and that because the debt of 1846 was unadjusted it follows the alleged bond debt of 1848 stated to be due to the Defendant in Original Suit 280 of 1853 aforesaid, must be false ;

ii. That the Moonsiff's decision in Original Suit 280 of 1853 is wrong and the judgment in this case which is based upon it is wrong. too. She prays therefore for the reversal of the Lower Court's award.

6. The Respondent in answer prayed the Court to confirm the original decree.

7. This suit has been taken up for decision somewhat out of its turn, to enable the Assistant Judge to dispose of Appeal Cause No. 93 of 1854 with which it has been connected in the Appellant's appeal petitions in the two numbers.

8. The Court having perused the Plaintiff's evidence in this case finds that neither the oral nor the documentary part of it is of the slightest value.

9. The document *A* is not signed at all ; it has not been proved in any way, nor has it been acknowledged by the Defendant. The six witnesses for Plaintiff contradict, moreover, one another. The 1st, 2d and 4th state it was the Defendant who purchased and took the planks &c. ; the 3d, 5th and 6th that it was the Defendants' son who acted in the matter. The 4th witness declares that he and the 2d witness together saw the brass codum paid in part satisfaction of the debt by the Defendant ; the 2d that he alone was a witness of the transaction. The Plaintiff's witnesses, generally, are not persons whose station in life and mental capacity would justify the Court in accepting their mere oral statements (even if unanimous) in a matter of this kind, unsupported by the usual documentary testimony adduced in such cases. The Court therefore rejects the Plaintiff's claim.

10. The Lower Court's decree is consequently confirmed. The appeal dismissed with costs.

THE 7TH JANUARY 1857.

Appeal Suit No. 95 of 1854.

Appeal from the decision of Runga Row, District Moonsiff of Valungemaun, dated 31st December 1853.

Coottyveerookalingaroyen, (Plaintiff,) Appellant,

versus

1. Salatchy,
2. Valookoorookondan,
3. Samoovandan,
4. Soobramaniya Vandan,
5. Ramasamy Vallalataven,
6. Sashappien,

(Defendants,) Respondents.

1. The Plaintiff sued for 14m. 60 goolies of nunjah and poonjah land, a moiety of a house and certain cattle or their value, to which he stated he was entitled, as the undivided co-parcener of the 1st Defendant's late husband, and which the 1st Defendant (his widow) had under the evil persuasion of the other Defendants permitted to go into the possession of the latter.

2. The 1st Defendant in answer declared that the Plaintiff and her late husband had divided interests on the 22d July 1841, and that the former had no right to make the above claim. She added that she had mortgaged her lands to the other Defendants to enable her to pay her own and late husband's lawful debts.

3. The 3d Defendant supported the above answer.

4. The Plaintiff replied and the 1st Defendant rejoined in support of their respective pleas.

5. The 2d, 4th, 5th and 6th Defendants allowed the suit to go exparte.

6. The Plaintiff filed 3, the 1st Defendant 15, the 3d Defendant 2 documents. The former examined 7, the 1st Defendant 4, and the 3d Defendant 1, witness. One witness was examined jointly for Plaintiff and the 1st Defendant, 2 for the 1st and 3d Defendants.

7. The District Moonsiff dismissed the suit because the evidence appeared to him to preponderate in favor of the 1st Defendant's pleas.

8. The Plaintiff appeals urging;

i. That the division deed No. 1 produced for the defence was never carried into effect;

ii. That the 1st Defendant as a childless widow can have no power of alienating landed property under the Hindoo law;

iii. That the evidence has proved that the 1st Defendant since her husband's death has lived a profligate life, a fact which also excludes her from the inheritance under the same law;

iv. That the original decree is therefore altogether wrong.

9. The 1st Respondent in answer contended that the Moonsiff's decision was right and ought to be confirmed.

10. The 2d Respondent supported the above in his answer.

11. The 5th Respondent (who had made no answer originally) stated in appeal that he held a mortgage lien on some of the land in dispute under a bond from the 1st Defendant's late husband, but that the decree he had obtained in his favor in reference thereto, had not been executed, because the Plaintiff had prayed that execution might be stayed, pending the result of this action. He requested the Court to recognise his (Respondent's) claim as against that asserted by all the other parties concerned.

12. The Assistant Judge on perusal of the original record resolves to confirm the Lower Court's award.

13. There is no evidence whatever which the Court can credit to prove that the 1st Defendant since she became a widow has been leading a profligate life as alleged by the Plaintiff. Her right to the inheritance is not therefore forfeited under the Hindoo law.

14. There appears no reason further for doubting that the division between Plaintiff and the 1st Defendant's late husband was actually carried into effect. The Plaintiff admits that it was contemplated and that the deed No. 1 was executed. But the preponderance of evidence the Court observes, is in favor of the Defendant's pleas that the parties were from that date "divided members" and that therefore the present claim to the inheritance on Plaintiff's part (the widow being alive) is contrary to the law.

15. The appeal is dismissed with costs.

THE 9TH JANUARY 1857.

Appeal Suit No. 85 of 1854.

Appeal from the decision of Moulavee Mahomed Adavulla Saib, Moofty Sudr Ameen, of Combaconum, dated 24th January 1854.

Soobbaramien, (Plaintiff,) Appellant,

versus

1. Varadiengar,
2. Soondara Iyengar,
3. Streenevasiengar,
4. Vadanliengar,
5. Ragooviengar,

(Defendants,) Respondents.

1. The Plaintiff sued for rupees 278-4-7, principal and interest due by the Defendants under a bond for rupees 164 in favor of Plaintiff's late grandfather and executed by the Defendants' father under date 2d May 1843.

2. The 1st Defendant's answer admitted the bond in issue but pleaded that only rupees 6-12-3 were now due to the Plaintiff thereon. The 2d, 3d and 4th Defendants subscribed their concurrence in the above answer.

3. The 5th Defendant pleaded that he was not liable for the amount with his other brothers (1st to 4th Defendants) because he had been received in adoption by one Veeraragavadeetchatur.

4. The reply supported the plaint. There was no rejoinder.

5. The Plaintiff filed 4, the 1st Defendant 2, the 5th Defendant 3, exhibits. The Plaintiff examined 2, the 1st Defendant 5, the 5th Defendant one, witness, and 2 were questioned jointly by the 1st and 5th Defendants. One Vadantachariar was examined by the Court.

6. One Vadantiengar presented a motion accompanied with copy of a decree in Original Suit 250 of 1850 Keevalore Moonsiff's file, stating that the 5th Defendant had not been adopted by his (petitioner's) uncle, and praying the Court to reject the 5th Defendant's plea.

7. The Moofty Sudr Ameen found for Plaintiff against the

first four Defendants, but disallowed that portion of the debt, the refund of which, the latter in the opinion of the Court had succeeded in proving. The amount decreed was rupees 6-12-3 with proportionate costs.

8. The Plaintiff appeals stating ;

i. That the canakaroopoo No. 1 filed by the 1st Defendant to which the Moofty has given credit is a forgery, and that the Lower Court did not examine the evidence by which the fabrication of the said document might have been established ;

ii. That the Defendant's witnesses are unworthy of credit. He prays for a decision granting him also the amount disallowed as originally sued for.

9. The 1st Respondent in an answer in which the 5th Respondent also subscribed his concurrence stated, that the Document No. 1 was amply supported by the other exhibits filed and that the 5th Respondent was very properly excluded from liability by the Moofty.

10. The Assistant Judge having carefully perused the original proceedings and referred to the documents filed by the contending parties, is satisfied that the accounts Nos. 1 and 2 (which are supported by sufficient credible evidence) are genuine documents, executed as they purport, by the Plaintiff's grandfather, and that consequently the debt of the (1st to the 4th) Defendants, does not exceed the amount admitted by the latter and decreed by the Lower Court.

11. The Defendants 1 to 4 having taken upon themselves the 5th Defendant's responsibility, the Moofty correctly excluded the latter from the suit.

12. The appeal is dismissed with costs.

THE 14TH JANUARY 1857.

Appeal Suit No. 70 of 1854.

Appeal from the decision of Kishtna Row, District Moonsiff of Mayaveram, dated 26th December 1853.

Tyalummaul, (Plaintiff,) Appellant,

versus

1. Ammanyammaul,
2. Soobbien,
3. Vydinadaswamy Iyen,
4. Ramaswamy Iyen,
5. Samy Iyen,

(Defendants,) Respondents.

1. The Plaintiff sued for 9m. 20⅛g. of nunjah, poonjah land valued at rupees 24-14-11, certain house grounds worth rupees 15-8, the merassy registry of the said property, as well as for rupees 53-11 the value of the income of the said lands. She made the claim on the grounds that she had been constituted by her late son Sashappien the owner of a certain portion of his estate under a will executed by him before his death, and that the 1st Defendant his widow, who was entitled under the same instrument to the other share, had now after acquiescing in the provisions of the will for some time, illegally prevented her, Plaintiff, enjoying her rights.

2. The 1st Defendant in her answer declared that the will was a forgery and was illegal besides, because she was herself her husband's heiress, entitled to all his property. The 2d Defendant subscribed his concurrence in the above answer.

3. The Plaintiff and 1st Defendant replied and rejoined respectively, in support of the plaint and answer.

4. The other parties were exparte.

5. The Plaintiff filed 17, the 1st Defendant 4, documents. The former examined 8, the latter and 2d Defendant, jointly, 5. witnesses.

6. The District Moonsiff held that the will filed by the Plaintiff was clearly invalid under the provisions of Section IV, Regulation V of 1829, because the 1st Defendant was by Hindoo

Law the legal heiress of her late husband, and the latter was not competent to devise a share of his property to his mother (the Plaintiff) without the full consent of his own wife. The Court however considered the 1st Defendant bound to maintain the Plaintiff and accordingly directed her to make over to the latter in lieu of maintenance and only during life, the land and house grounds sued for, but disallowed the income claimed, because no evidence had been adduced in support of it. The land &c. thus decreed it was declared should revert to the 1st Defendant, on the death of Plaintiff.

7. Plaintiff appeals arguing;

i. That by Hindoo Law a mother being in place of the deity her rights are preferrable to a wife's, and therefore her son's will should have been respected by the Lower Court;

ii. That the said property has already lapsed to her (Appellant) as directed in the will, and the 1st Defendant cannot question the validity of the transfer;

iii. That Original Suit 3 of 1847 and Appeal Cause 43 of 1849 Civil Court's and Sudr Udalut's file, afford a precedent which clearly proves the justice of her claim in the present case.

iv. That the 1st Defendant has admitted her rights under the will by granting her a share of the property and the produce of the land, as proved in evidence.

v. That the income disallowed by the Lower Court has been proved by the statements of her witnesses.

8. The 1st Respondent denied the Plaintiff's right to claim any thing whatever under the will in question as a proprietor thereof, but admitting she was entitled to maintenance she prayed the Court to confirm the original decree.

9. The Assistant Judge on reference to the decree of the Sudr Udalut in Appeal No. 43 of 1849 abovementioned as well as to the decision of the Pundits of that Court in the same case, deemed it necessary to submit the question of the validity of the will now in issue, for the determination of the law officers. The following question therefore was submitted through the usual channel and the reply of the Pundits is subjoined.

QUESTION.

i. A Bramin possessing certain landed and other property, previous to his death made a will bequeathing a certain proportion

of the said estate (nearly a moiety) to his childless widow, and a similar share to his mother, constituting them both proprietors of the portions thus separately left them;

ii. The widow now submits that the will is invalid because under the durmashastra she is alone the heiress to the entire estate, and her husband's mother is entitled only to maintenance;

iii. There can be no doubt that the will is an authentic document duly executed by the deceased.

iv. What says the law? Is the said will valid by Hindoo law, or is it null and void with reference to the provisions of Section IV, Regulation V of 1829?

Answer of the Pundits of the Court of Sudr Udalut.

Under the Hindoo law, a widow is entitled to her husband's property left undisposed of until his death, to the exclusion of his mother, who is entitled only to maintenance.

If, in the present instance, therefore, the Bramin referred to in the question had, previously to his demise, delivered over to his mother the proportion of property given to her, and constituted her distinct proprietor of the same, his widow cannot claim it, inasmuch as the said act of her husband, amounting as it does to an affectionate gift, destroyed his proprietary right in the said portion before his death.

If, on the other hand, the said individual intended by the will referred to in the question, that his mother and wife should divide his property and take possession of their respective shares after his death, then his widow would be entitled to protest against it, inasmuch as that act of her husband does not render his gift in favor of his mother, full and complete, and annihilate his right of ownership previously to his demise. The will would not therefore be valid.

5th January 1857. } (Signed) APPANNA SASTRY,
Senior Pundit Sudr Udalut.

(„) C. GOPAULA SASTRY,
Junior Pundit Sudr Udalut.

10. On reference to the decision of the Pundits in Sudr Appeal Cause No. 43 of 1849, it will be found that the construction of the law given in that case (which was nearly similar to the present) is materially at variance with that now declared by the

same authorities to be the law in regard to the testamentary power of a Hindoo. By the present construction it would appear that the provisions of a will are of no force whatever unless the testator before his death have constituted the legatee the distinct proprietor of the property bequeathed, by delivering it over to his or her possession; the said act being a gift or donation made during life, of a portion of his estate over which the owner had then the fullest control.

11. The Court being bound to adopt the interpretation of the law above set forth (supported as it is in great measure by Sir T. Strange, Mr. Ellis and Mr. Colbrooke) finds in the present case the Plaintiff claims merely and solely as a legatee whose rights accrued after the death of the testator (her son) to certain property which till now, has not been placed in her possession absolutely, in accordance with the provisions of a will left by the deceased. There is no evidence on which the Court can rely that any portion of the property in issue was enjoyed by the Plaintiff as the proprietress thereof, in virtue of the will *A*, either before or after the death of her son, and the document is invalid by Hindoo Law because the devise of the property cannot in any way be deemed a donation thereof during the life time of the deceased, in the manner particularly described in the Pundits' answer above set forth.

12. Under the Lower Court's award in this case the Plaintiff has been allowed a life interest in the property she claimed in lieu of maintenance and this benefit the 1st Respondent is willing she should enjoy. The decision in question appears to the Assistant Judge equitable and right; and the Court declines to disturb it.

13. The appeal is dismissed with costs.

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